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WHO: Sponsored by the Office of the Federal Register.

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2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, April 10, 2012
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Proclamation 8790 of April 2, 2012

National Cancer Control Month, 2012

By the President of the United States of America

A Proclamation

This year, an estimated half a million Americans will lose their lives to cancer, and three times that many will be diagnosed with this devastating illness. Cancer patients are parents and grandparents, children and cherished friends; the disease touches almost all of us and casts a shadow over families and communities across our Nation. Yet, today, we stand at a critical moment in cancer research that promises significant advances for patients and an accelerated pace of lifesaving discoveries. During National Cancer Control Month, we remember those we have lost, support Americans fighting this disease, and recommit to progress toward effective cancer control.

Prevention and screening are our best defenses against cancer. All Americans can reduce their risk by keeping a healthy diet, exercising regularly, limiting sun exposure, avoiding excessive alcohol consumption, and living tobacco-free. Because tobacco use causes a wide variety of cancers and chronic lung diseases, I encourage individuals struggling to quit to call 1–800-QUIT-NOW or visit www.SmokeFree.gov for help and information.

Regular screening and check-ups with a health professional can also play a key role in preventing cancer and detecting the disease early, when it is often most treatable. Under the Affordable Care Act, over 54 million Americans with private health coverage have already received preventive services—including mammograms and other cancer screenings—at no additional cost. For more resources on how to reduce the risk of developing cancer, visit www.Cancer.gov.

Federally funded research has brought about landmark advances in cancer prevention, diagnosis, and treatment that promise real change for the millions of Americans facing this disease. Sophisticated analysis continues to shed light on the molecular basis of cancer and unlock new therapies. Innovative studies are paving the way for effective treatments to deadly cancers, including melanoma. And new research shows that screening procedures can reduce mortality from lung cancer, which could save lives among those at greatest risk. As we move forward, my Administration will continue to support groundbreaking cancer research that brings hope to countless individuals and families across our country.

Over the past several decades, we have made remarkable progress in understanding and combatting cancer. We owe the knowledge we have gained and the lives we have saved to the countless doctors, patients, families, and researchers whose dedication and perseverance have led the way to today's most promising technologies and treatments. During National Cancer Control Month, we pay tribute to the men, women, and children we have lost to cancer, and we look ahead to a future in which more Americans have the opportunity to live out the full measure of their days in health and happiness.

The Congress of the United States, by joint resolution approved March 28, 1938 (52 Stat. 148; 36 U.S.C. 103), as amended, has requested the President to issue an annual proclamation declaring April as ''Cancer Control Month.''

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim April 2012 as National Cancer Control Month. I encourage citizens, government agencies, private businesses, nonprofit organizations, and other interested groups to join in activities that will increase awareness of what Americans can do to prevent and control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–8317
Filed 4–4–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8791 of April 2, 2012

National Child Abuse Prevention Month, 2012

By the President of the United States of America

A Proclamation

As parents, as communities, and as a Nation, the work of raising our children stands among our greatest responsibilities and our most profound blessings. The support we give and the examples we set form cornerstones for their success, and by teaching our children to trust in themselves, we equip them with confidence, hope, and determination that can last a lifetime. Tragically, neglect and abuse erode this fundamental promise for too many young Americans. During National Child Abuse Prevention Month, we renew our commitment to break the cycle of violence, strengthen support for all who have been affected, and empower our young people with the best we have to offer.

Over half a million American children suffer neglect or abuse every year. A strong and well-informed family unit is the surest defense against child abuse, and parents and caregivers who have support—from relatives, friends, neighbors, and their communities—are more likely to provide safe and healthy homes for their children. Trusted friends and active community members can help ensure families get the support they need by offering their time and resources, taking an active role in children's lives, and fostering a safe environment for young people to learn and grow. By coming together in service to our communities, we do more to meet our obligation to do right by the next generation.

My Administration continues to prioritize the health and well-being of children across our country. With partners at every level of government and throughout the private sector, we are supporting services that protect young Americans from abuse and neglect and extend help to those who have been affected. We are investing in early learning programs and supporting initiatives that promote positive outcomes for children and families. And we are connecting parents and professionals to new tools to identify, treat, and prevent abuse. I encourage all Americans to learn more about what they can do at: www.ChildWelfare.gov/Preventing.

Every child deserves the opportunity to grow up with the promise and protection of a loving family. This month, we recommit to that vision, and to providing care, stability, and a brighter future for our sons and daughters.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2012 as National Child Abuse Prevention Month. I call upon all Americans to observe this month with programs and activities that help prevent child abuse and provide for children's physical, emotional, and developmental needs.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–8318
Filed 4–4–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8792 of April 2, 2012

National Donate Life Month, 2012

By the President of the United States of America

A Proclamation

With quiet compassion and exceptional generosity, organ and tissue donors leave an indelible mark on the lives of countless Americans. Their selfless acts inspire hope at moments of profound need, and they recall the giving spirit that lies at the heart of our national character. During National Donate Life Month, we reflect on that essential quality and recommit to saving lives through organ and tissue donation.

The need for donors is greater than ever before. Today, more than 110,000 Americans await an organ transplant, and while many individuals will receive lifesaving treatment, too many will pass before help arrives. All of us can play a part in ending this unacceptable loss of life. I encourage every American to consider becoming an organ and tissue donor; to consult their family, friends, physician, or faith leader about their decision; and if they choose to be a donor, to register on their state organ donor registry. To learn more about organ and tissue donation and how to enroll in a donor registry, visit: www.OrganDonor.gov.

Even as millions of Americans choose to donate life, our Nation continues to face a shortage of donors that impacts patients and families across our country. This month, we renew our commitment to addressing this urgent public health issue, supporting donors and their families, and ensuring every individual has access to the care and services they need.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2012 as National Donate Life Month. I call upon health care professionals, volunteers, educators, government agencies, faith-based and community groups, and private organizations to join forces to boost the number of organ and tissue donors throughout our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–8319
Filed 4–4–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8793 of April 2, 2012

National Financial Capability Month, 2012

By the President of the United States of America

A Proclamation

Across our country, millions of Americans work hard and play by the rules to protect the gains they have made and secure a brighter future for their loved ones. The resilience and ingenuity of our people are driving our economic recovery, and as we lay the foundation for an America built to last, we must also promote a financial system that is fair and sound for all. During National Financial Capability Month, we recommit to ensuring everyone has access to the information and tools that empower them to operate safely and smartly in the marketplace.

A strong and stable economy requires responsibility from top to bottom—from banks and borrowers to workers and executives. To protect everyday Americans from abuses in the financial industry, I appointed Richard Cordray to head the Consumer Finance Protection Bureau (CFPB). His responsibility—and that of the CFPB—is to ensure all Americans have the resources they need to make sound financial decisions, and to guarantee every individual receives fair treatment when they apply for a mortgage, take out a student loan, or use a credit card.

As we work to put an end to predatory behavior in our financial markets, my Administration is taking action to empower individuals and families with the tools they need to get ahead. Last year, we collaborated with representatives from the private, public, and non-profit industries to release the National Strategy for Financial Literacy—a comprehensive plan to improve financial education across our country. The President's Advisory Council on Financial Capability (PACFC) continues to identify and promote the most effective, data-driven strategies to better educate Americans on financial issues. With help from the PACFC, we are working to provide our young people with financial skills to become successful students, entrepreneurs, and leaders; to ensure American workers are able to provide for their loved ones and save for retirement; and to foster financial capability in families and communities across our Nation.

During National Financial Capability Month, we rededicate ourselves to advancing robust consumer education and to helping every individual take ownership of their financial future. I encourage all Americans to take advantage of the free, reliable financial resources at www.MyMoney.gov, www.ConsumerFinance.gov, and 1–888–MyMoney.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2012 as National Financial Capability Month. I call upon all Americans to observe this month with programs and activities to improve their understanding of financial principles and practices.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–8323
Filed 4–4–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8794 of April 2, 2012

National Sexual Assault Awareness and Prevention Month, 2012

By the President of the United States of America

A Proclamation

Though we have come far in the fight to reduce sexual violence, the prevalence of sexual assault remains an affront to our national conscience that we cannot ignore. This month, we stand with survivors of sexual assault, join together to break the silence, and recommit to ending this devastating crime.

Rape and sexual assault inflict profound suffering upon millions of Americans every year. Nearly one in five women has been raped, and still more have endured other forms of sexual violence or abuse. Tragically, these crimes take their greatest toll on young people; women between the ages of 16 and 24 are at greatest risk of rape and sexual assault, and many victims, male and female, first experience abuse during childhood. The trauma of sexual violence leaves scars that may never fully heal. Many survivors experience depression, fear, and suicidal feelings in the months and years following an assault, and some face health problems that last a lifetime.

It is up to all of us to ensure victims of sexual violence are not left to face these trials alone. Too often, survivors suffer in silence, fearing retribution, lack of support, or that the criminal justice system will fail to bring the perpetrator to justice. We must do more to raise awareness about the realities of sexual assault; confront and change insensitive attitudes wherever they persist; enhance training and education in the criminal justice system; and expand access to critical health, legal, and protection services for survivors. As we fight sexual assault in our communities, so must we combat this crime within our Armed Forces. The Department of Defense provides additional resources for service members and military families at 1–877–995–5247 and at: www.SafeHelpline.org.

With the leadership of Vice President Joe Biden, my Administration is working to stop sexual violence before it begins and ensure justice for the countless men, women, and children who have already been harmed. Last year, we introduced comprehensive guidance to schools, colleges, and universities to clarify their obligations under existing civil rights law to prevent and respond to campus sexual assault. In January, we issued a revised definition of rape that will improve our understanding of where and how often this crime occurs. And today, we are collaborating with private organizations and agencies at every level of government to bolster advocacy and assistance for victims of sexual violence. All of us share a responsibility to those in need. By standing with survivors of rape and sexual assault and helping them secure the support and services they deserve, we do right by the ideals of compassion and service at the heart of the American character. For additional information and resources, visit: www.WhiteHouse.gov/1is2many.

During National Sexual Assault Awareness and Prevention Month, we rededicate ourselves to breaking the cycle of violence that threatens lives, erodes communities, and weakens our country. As we reflect on the progress we

have made and the distance we have yet to go, let us recommit to empowering survivors and fighting for a safer future for every American.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2012 as National Sexual Assault Awareness and Prevention Month. I urge all Americans to support survivors of sexual assault and work together to prevent these crimes in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–8335
Filed 4–4–12; 8:45 am]
Billing code 3295–F2–P

Presidential Documents

Proclamation 8795 of April 2, 2012

World Autism Awareness Day, 2012

By the President of the United States of America

A Proclamation

Autism spectrum disorders (ASDs) affect young people and adults of every background, and millions of American families know the weight of their impact. On World Autism Awareness Day, we recognize ASDs as a growing public health issue and recommit to supporting those living with an ASD and their loved ones.

We have made great strides in our understanding of the autism spectrum, and today, children and adults with ASDs are leading independent and productive lives. However, barriers still remain for these individuals and their families. As a Nation, we share a responsibility to ensure persons living with ASDs have the opportunity to pursue their full measure of happiness and achieve their greatest potential.

Meeting the needs of Americans on the autism spectrum remains a priority for my Administration. Last September, I was proud to sign the Combating Autism Reauthorization Act, which provides critical funding for autism research, education, early detection, and support and services for children and adults. Under the Affordable Care Act, new insurance plans are required to cover autism screenings and developmental assessments for children at no additional cost to parents. Insurance companies can no longer deny coverage to children with pre-existing conditions, and young people can stay on their parents' health insurance plan until age 26, easing financial burdens for families. With the Department of Education, we are making substantial investments in enhancing education for children on the autism spectrum—from early learning to higher education. And federally funded research continues to explore how we can improve independent living, develop assistive technology, and advance vocational rehabilitation services for individuals with autism. For additional information and resources, I encourage all Americans to visit www.HHS.gov/autism.

As new policies and bold actions break down old barriers and reshape attitudes, we move closer to a world free of discrimination and full of understanding for our family members and friends living with ASDs. On World Autism Awareness Day, let us reaffirm our dedication to supporting those on the autism spectrum and their families, and let us continue the work of ensuring all our people have a chance at achieving the American dream.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 2, 2012, as World Autism Awareness Day. I encourage all Americans to learn more about autism and what they can do to support individuals on the autism spectrum and their families.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of April, in the year of our Lord two thousand twelve, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–8343
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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

[Doc. #AMS–CN–11–0066]

RIN 0581–AD19

Revision of Cotton Classification Procedures for Determining Cotton Leaf Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is amending the procedures for determining the official leaf grade for Upland and Pima cotton. The leaf grade is a part of the official classification which denotes cotton fiber quality used in cotton marketing and manufacturing of cotton products. Previously, the leaf grade was determined by visual examination and comparison to the Universal Cotton Standards for Leaf Grade that serves as the official cotton standards by qualified cotton classers. Amended procedures replace the classer's leaf determination with the instrument leaf measurement made by the High Volume Instrument (HVI) system, which has been used in official cotton classification for Upland Cotton since 1991.

DATES: *Effective Date:* April 6, 2012.

FOR FURTHER INFORMATION CONTACT: Darryl Earnest, Deputy Administrator, Cotton & Tobacco Programs, AMS, USDA, 3275 Appling Road, Memphis, TN 38133. Telephone (901) 384–3060, facsimile (901) 384–3021, or email *darryl.earnest@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

AMS Cotton and Tobacco Programs is amending the procedures for providing cotton leaf grade classification services as authorized by the United States Cotton Standards Act of 1923, as amended (7 U.S.C. 51–65), the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–476), and the U.S. Cotton Futures Act (7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g)). While measurements for other quality factors are performed by precise HVI measurements, manual determinations for leaf grade and extraneous matter are currently part of the official USDA cotton classification. Accurate assignment of leaf grade is of economic importance to all participants along the cotton supply chain since leaf content is all waste and there is a cost factor associated with its removal. Furthermore, since small leaf particles cannot always be removed, these particles detract from the quality and, therefore, the value of the finished product.

AMS has HVIs with the ability to optically identify, with a high level of confidence, the number of leaf particles (Particle Count) and to measure the surface area covered by non-lint particles (Area). AMS then applies mathematical algorithms to correlate Particle Count and Area data to the Universal Cotton Standards for Leaf Grade which serve as the ultimate comparison for cotton grading. A pilot project was conduct by AMS during 2009 and 2010 cotton classing seasons to evaluate the accuracy of the proposed instrument leaf grade determination process. Results showed that the HVI measures leaf as compared back to the Universal Cotton Standards for Leaf Grade more accurately than cotton classers. This rule amends the cotton classification process, replacing the classer's leaf determination with the instrument leaf measurement made by the HVI system. Instrument leaf grading is expected to improve the repeatability, consistency and accuracy of leaf grade classification data provided to the cotton industry, while improving operational efficiency.

In § 27.2 (n), the definition of the term ''classification'' is revised to reflect the changes in procedures made under 7 CFR part 28.

Also under 7 CFR part 27, § 27.31 is revised to reflect the deletion of the requirement for cotton classers to manually determine leaf grade. The revised section reflects the changes made in procedures for determination of cotton quality in accordance with the official standards.

In 7 CFR part 28, § 28.8 is revised to reflect the change in cotton classification procedures which replaces classer visual examinations to determine leaf grade with instrument leaf measurement by HVI systems.

In addition, miscellaneous other changes are made to 7 CFR parts 27 and 28 to better reflect current procedures in view of leaf determination change. For example, those determinations made by cotton classers or by authorized Cotton Program employees are specified.

Summary of Comments

A proposed rule was published on December 23, 2011, with a comment period of December 23, 2011 through January 9, 2012 (76 FR 80278). AMS received four comments: One from a national trade organization that represents approximately 80 percent of the US cotton industry, including cotton producers, ginners, warehousemen, merchants, cooperatives, cottonseed processors, and textile manufacturers from Virginia to California; one from a national trade organization comprised of eight state and regional membership organizations that represent approximately 680 individual cotton ginning operations in 17 cotton-producing states; one from a national trade organization representing cotton merchant firms that handle over 80 percent of the U.S. cotton sold in domestic and foreign markets; and one from an individual commenter who grades cotton. The comments from the trade organizations were supportive of both the proposed changes while the individual commenter was opposed. The comments may be viewed at *www.regulations.gov.*

Comments from the three national trade organizations expressed support for AMS using instrument leaf grading as the method for determining official leaf grades. Furthermore, each of these organizations recognized how thorough testing conducted by AMS throughout both the 2009 and 2010 classing seasons demonstrated improvements in both the consistency and repeatability of leaf grade determination.

One individual commenter expressed concerns about the accuracy of instrument-determined leaf grades, the timing of the regulatory change, and the length of the comment period. The commenter stated their belief that instrument leaf grading is not a more accurate means to grade cotton over a human classer. AMS began using the instrument-based system on a trial basis, with the ability of classers to overwrite inaccurately assigned data, during the 2009 and 2010 cotton crops. Results demonstrated significant improvements in accuracy and repeatability as factors such as grader fatigue and central tendency were eliminated. Trial results were presented at numerous open-forum discussions conducted throughout the Cotton Belt to ensure that technical and operational information was fully and accurately communicated to the various segments of the U.S. cotton industry. AMS graders in all field offices evaluated the process change for accuracy, provided feedback, and were briefed on the impact the change would have on streamlining their duties. AMS integrated these graders' feedback to help refine the computer system used for assigning the leaf grade.

The timeline for implementing the process change was scheduled around the completion of critical software programing modifications made to more than four hundred proprietary AMS Information Technology (IT) programs. These computer programs ensure the accurate calculation, secure storage, and seamless flow of cotton quality data, while providing timely information to managers for the evaluation of equipment and employees. With the industry's acceptance, approval, and recommendation to implement, the expectation was that software modifications and the regulatory process would conclude concurrently prior to the beginning of the 2011 crop. However, changes in the timeline have resulted in finalization at this time.

The comment period time frame was deemed appropriate to implement instrument leaf grading as soon as possible in order to allow the cotton industry to fully benefit from the increased accuracy and repeatability of cotton leaf data provided by instrument leaf grading during the current classing season. The timing of the comment period fell coincidentally during the Annual Cotton Beltwide Conference—the largest single gathering of representative of all segments of the U.S. cotton industry. AMS used this forum to notify constituents of the opportunity to submit comments.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities. Fees paid by users of the service are not changed by this action; implementation of the new procedures indicates the existing fees remain sufficient to fully reimburse AMS for provision of the services.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers, merchants, and textile manufacturers in the U.S. who voluntarily use the AMS cotton classing services annually under the United States Cotton Standards Act of 1923, as amended, the Cotton Statistics and Estimates Act of 1927, and the U.S. Cotton Futures Act. The majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The change in procedures will not significantly affect small businesses as defined in the RFA because:

(1) Classification will continue to be based upon the Universal Cotton Standards for Leaf Grade established and maintained by the Department;

(2) The HVI measurement has been a part of the official classification record since 1991. Implementation of the revision for all cotton classification will not affect competition in the marketplace or adversely impact on cotton classification fees; and

(3) The use of cotton classification services is voluntary. For the 2010 crop, 17.6 million bales were produced by growers, and virtually all of them were voluntarily submitted for USDA classification. Futures classification services provided for merchants during the same period totaled approximately 750 thousand bales.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501–3520), the information collection requirements contained in the regulation to be amended is currently approved under OMB control number 0581–0008, Cotton Classing, Testing and Standards.

Pursuant to 5 U.S.C. 553, it is found that good cause exists for not postponing the effective date of the rule until 30 days after publication in the **Federal Register** because: (1) The 2011 cotton crop year has already begun; (2) the industry is familiar with instrument leaf grading process as AMS implemented a pilot project to evaluate the accuracy of the determination for crop years 2009 and 2010; and (3) there is overall industry support for this change.

List of Subjects

7 CFR Part 27

Commodity futures, Cotton.

7 CFR Part 28

Administrative practice and procedure, Cotton.

For the reasons set forth in the preamble, 7 CFR parts 27 and 28 are amended as follows:

PART 27—[AMENDED]

■ 1. The authority citation for 7 CFR part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 4736, 7 U.S.C. 1622(g).

■ 2. In § 27.2, paragraph (n) is revised to read as follows:

§ 27.2 Terms defined.

* * * * *

(n) *Classification.* The classification of any cotton shall be determined by the quality of a sample in accordance with the Universal Cotton Standards (the official cotton standards of the United States) for the color grade, the leaf grade, and fiber property measurements of American Upland cotton. High Volume Instruments will determine all fiber property measurements except extraneous matter. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter.

* * * * *

■ 3. Section 27.31 is revised to read as follows:

§ 27.31 Classification of Cotton.

For purposes of subsection 15b (f) of The Act, classification of cotton is the determination of the quality of a sample in accordance with the Universal Cotton Standards (the official cotton standards of the United States) for the color grade

and leaf grade of American upland cotton, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except extraneous matter. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments.

PART 28—[AMENDED]

■ 3. The authority citation for 7 CFR part 28 continues to read as follows:

Authority: 7 U.S.C. 55 and 61.

■ 4. Section 28.8 is revised to read as follows:

§ 28.8 Classification of cotton; determination.

For the purposes of The Act, the classification of any cotton shall be determined by the quality of a sample in accordance with Universal Cotton Standards (the official cotton standards of the United States) for the color grade and the leaf grade of American upland cotton, the length of staple, and fiber property measurements such as micronaire. High Volume Instruments will determine all fiber property measurements except extraneous matter, special conditions and remarks. High Volume Instrument colormeter measurements will be used for determining the official color grade. Cotton classers authorized by the Cotton and Tobacco Programs will determine the presence of extraneous matter, special conditions and remarks and authorized employees of the Cotton and Tobacco Programs will determine all fiber property measurements using High Volume Instruments. The classification record of a Classing Office or the Quality Control Division with respect to any cotton shall be deemed to be the classification record of the Department.

Dated: March 30, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8125 Filed 4–4–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0908; Directorate Identifier 2009–NM–067–AD; Amendment 39–16987; AD 2012–06–06]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 757 airplanes. This AD requires replacing the power control relays for the fuel boost pumps and override pumps with new relays having a ground fault interrupter (GFI) feature. This AD also requires an electrical bonding resistance measurement for certain GFI relays to verify that certain bonding requirements are met. This AD also requires, for certain airplanes, an inspection to ensure that certain screws are properly installed, and installing longer screws if necessary. This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective May 10, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 10, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6482; fax: (425) 917–6590; email: *Georgios.Roussos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That SNPRM was published in the **Federal Register** on January 3, 2011 (76 FR 28). The original NPRM (74 FR 53436, October 19, 2009) proposed to require replacing the power control relays for the fuel boost pumps and override pumps with new relays having a GFI feature. The SNPRM proposed to add an electrical bonding resistance measurement for certain GFI relays to verify that certain bonding requirements are met. The SNPRM also proposed to add, for certain airplanes, an inspection to ensure that certain screws are properly installed, and installing longer screws if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the SNPRM (76 FR 28, January 3, 2011) and the FAA's response to each comment. Boeing concurs with the contents of the SNPRM.

Request To Permit Incorporation of Universal Fault Interrupter (UFI) as a Means of Compliance

American Airlines (AA) and TDG Aerospace requested that we revise the SNPRM (76 FR 28, January 3, 2011) to allow incorporation of the previously-approved Supplemental Type Certificate (STC) ST01950LA, issued January 17, 2007, as an approved means of compliance for providing fault protection for the center override fuel pumps. The commenters stated that the

UFI, in accordance with STC ST01950LA, performs as a GFI for the center override pumps, providing equivalent or better protection for detection and prevention of ground fault anomalies. The commenters added that the FAA has acknowledged that the UFI provides transient fault detection and steady state fault detection; and in response to any of the above electrical faults, the UFI will de-energize the airplane electromechanical relay to shut off the fuel pump. TDG stated that Boeing Model 757 airplanes utilize the same fuel pump part number for the center tank fuel boost pump application as the Boeing Model 737NG airplane. TDG Aerospace STC ST01950LA for Model 757 airplanes utilizes the same UFI part number as STC ST02076LA for Model 737NG airplanes that have the UFI as an acceptable means of compliance through the Manager, Seattle Aircraft Certification Office (ACO) approval process under Docket No. FAA–2010–1199 (AD 2011–20–07, Amendment 39–16818 (76 FR 60710, September 30, 2011)). TDG Aerospace pointed out that a large number of Model 757 operators have already incorporated STC ST01950LA as a means of compliance with FAA AD 2008–11–07, Amendment 39–15529 (73 FR 30755, May 29, 2008).

We partially agree. We have been informed that referring to an STC now violates Office of the Federal Register (OFR) regulations (1 CFR part 51) for approval of optional materials ''incorporated by reference'' in rules. However, we have added paragraph (g)(2)(ii) to this AD to specify that installation of TDG Aerospace UFIs to the center tank override pumps must be done in accordance with a method approved by the Manager, Seattle ACO, FAA. We have also added ''Note 1 to paragraph (g)(2)(ii) of this AD'' to specify that additional guidance on installing TDG Aerospace UFIs can be found in TDG Aerospace STC ST01950LA.

Request To Forego Screw Length Inspections and Electrical Bonding Checks for Center Override Pumps

AA requested that we exempt airplanes that have the UFI installed for the center override pumps from performing screw length inspections and electrical bonding checks that are specific to the GFI installation. The commenter stated that the UFI installation under STC ST01950LA already complies with proper grip length. The commenter also stated that the UFI STC requires the bonding check of the installed UFI bracket to each panel.

We disagree with the commenter's request because the inspection requirements of paragraph (h) of the final rule clearly identify that the screw grip length inspections and GFI bonding checks are applicable only to airplanes that have Boeing Alert Service Bulletin 757–28A0078 or 757–28A0079, both dated July 16, 2008, accomplished before the effective date of the AD. Airplanes that have incorporated the UFI under STC ST01950LA on their center tank override pumps do not need to perform these additional inspections required by paragraph (h) of this AD. No changes have been made to this AD in this regard.

Request To Correct Typographical Errors in Service Bulletins

AA and United Airlines requested correction of a number of typographical errors in Boeing Service Bulletins 757–28A0078 and 757–28A0079, both Revision 1, both dated August 24, 2010.

AA stated that typographical errors in Boeing Service Bulletin 757–28A0078, Revision 1, dated August 24, 2010, mistakenly refer to the P37 panel as ''P33.'' In addition, AA and United Airlines stated that those service bulletins mistakenly refer to the standard wiring practices manual rather than the standard overhaul practices manual (SOPM) for the P33 and P37 panel identification.

United Airlines requested that paragraph (i) of the SNPRM (76 FR 28, January 3, 2011) be corrected to identify paragraph 3.B.12.l.(5) of Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 757–28A0078, Revision 1, dated August 24, 2010, and not the currently referenced paragraph 3.B.12.i.(5). Boeing Service Bulletin Information Notice 757–28A0078 IN 02, dated October 6, 2010, identifies paragraph 3.B.12.l.(5) as the impacted paragraph of the service bulletins.

We agree that the typographical errors needed to be corrected. Boeing has released Service Bulletins 757–28A0078 and 757–28A0079, both Revision 2, both dated January 11, 2012, which correct typographical errors in the calculations in paragraphs 3.B.12.m.(5) and 3.B.12.m.(6) of Boeing Service Bulletins 757–28A0078 and 757–28A0079, both Revision 1, both dated August 24, 2010. These service bulletin revisions also clarify certain actions and correct other typographical errors. Paragraphs (c), (g), and (h) of this AD have been updated to refer to Boeing Service Bulletins 757–28A0078 and 757–28A0079, both Revision 2, both dated January 11, 2012. Paragraph (i) of the SNPRM (76 FR 28, January 3, 2011) has been removed from this final rule. We have also added a new paragraph (i) to this AD to allow credit for accomplishing Boeing Service Bulletin 757–28A0078 or 757–28A0079, both Revision 1, both dated August 24, 2010, before the effective date of this AD.

Request To Allow Identification of P33 and P37 Panels ''Outside the Scope of the AD''

AA recommended that we allow the identification of the P33 and P37 panels as a statement ''outside the scope of the AD.'' AA stated that the GFI physical differences would be enough to distinguish between the old and new relay types. The commenter also stated that post-modification parts are illustrated in the revisions to operators' manuals, in the illustrated parts catalog, and airplane maintenance manual. The commenter pointed out that the lack of panel labeling would not affect the level of safety.

We disagree with the commenter's recommendation to change the final rule to address this issue. The requirement for panel identification specified in Step 3 in Figure 1 and Figure 2 of Boeing Service Bulletins 757–28A0078 and 757–28A0079, both Revision 1, both dated August 24, 2010, refers to identifying the P33 and P37 panels to show that this change was accomplished. Note (a) that accompanies the Step 3 instructions in those service bulletins calls for marking the panels with a unique marking under SOPM 20–50–10, which points to the incorporation of the changes under the accomplishment instructions of those service bulletins. It does not call for a change to the P33 and P37 panel part number. No change has been made to the AD in this regard.

Explanation of Changes to Final Rule

We have restructured paragraph (g) of this AD to clarify the locations for replacing the power control relays. Paragraph (g)(1) of this AD specifies the ''main tank fuel boost pumps,'' and paragraph (g)(2) of this AD specifies the ''center tank override fuel boost pumps.''

In addition, we have removed the Paperwork Reduction Act Burden Statement paragraph since no reporting is required in this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously—and minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the SNPRM (76 FR 28, January 3, 2011) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the SNPRM (76 FR 28, January 3, 2011).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 696 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replacement, measurement, and operational test	7 work-hours × $85 per hour = $595.	$12,600	$13,195	Up to $9,183,720.[1]
Inspection of screw installation and bonding resistance measurement.	1 work-hour × $85 per hour = $85.	$0	$85	$59,160.

[1] The cost for U.S. operators depends on airplane configuration.

We estimate the following costs to do any necessary installation that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this installation:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Installation of longer screw	1 work-hour × $85 per hour = $85	$0	$85

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–06–06 The Boeing Company: Amendment 39–16987; Docket No. FAA–2009–0908; Directorate Identifier 2009–NM–067–AD.

(a) Effective Date

This AD is effective May 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, –200PF, –200CB, and –300 series airplanes, certificated in any category; as identified in the applicable service bulletin specified in paragraph (c)(1) or (c)(2) of this AD.

(1) For Model 757–200, –200PF, and –200CB series airplanes: Boeing Service Bulletin 757–28A0078, Revision 2, dated January 11, 2012.

(2) For Model 757–300 series airplanes: Boeing Service Bulletin 757–28A0079, Revision 2, dated January 11, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 28, Fuel.

(e) Unsafe Condition

This AD was prompted by fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent damage to the fuel pumps caused by electrical arcing that could introduce an ignition source in the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement, Measurements, and Test

For airplanes on which the actions specified in Boeing Alert Service Bulletin 757–28A0078, dated July 16, 2008, or 757–28A0079, dated July 16, 2008, have not been accomplished before the effective date of this

AD: Within 60 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Replace the power control relays for the main tank fuel boost pumps with new relays having a ground fault interrupter (GFI) feature; do applicable electrical bonding resistance measurements between the GFI relays and their installation panel to verify that applicable bonding requirements are met; and do an operational test to ensure correct operation; as specified in Boeing Service Bulletin 757–28A0078, Revision 2, dated January 11, 2012 (for Model 757–200, –200CB, and –200PF series airplanes); or Boeing Service Bulletin 757–28A0079, Revision 2, dated January 11, 2012 (for Model 757–300 series airplanes). Do all actions in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 757–28A0078, Revision 2, dated January 11, 2012 (for Model 757–200, –200CB, and –200PF series airplanes); or Boeing Service Bulletin 757–28A0079, Revision 2, dated January 11, 2012 (for Model 757–300 series airplanes).

(2) Replace the power control relays for the center tank override fuel boost pumps with new relays having a GFI feature, in accordance with the actions required in paragraph (g)(2)(i) or (g)(2)(ii) of this AD.

(i) Replace the power control relays with new relays having a GFI feature; do applicable electrical bonding resistance measurements between the GFI relays and their installation panel to verify that applicable bonding requirements are met; and do an operational test to ensure correct operation; as specified in Boeing Service Bulletin 757–28A0078, Revision 2, dated January 11, 2012 (for Model 757–200, –200CB, and –200PF series airplanes); or Boeing Service Bulletin 757–28A0079, Revision 2, dated January 11, 2012 (for Model 757–300 series airplanes). Do all actions in accordance with Part 1 of the Accomplishment Instructions of Boeing Service Bulletin 757–28A0078, Revision 2, dated January 11, 2012 (for Model 757–200, –200CB, and –200PF series airplanes), or Boeing Service Bulletin 757–28A0079, Revision 2, dated January 11, 2012 (for Model 757–300 series airplanes).

(ii) Install and maintain TDG Aerospace universal fault interrupters (UFIs), in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 1 to paragraph (g)(2)(ii) of this AD: Guidance on installing TDG Aerospace UFIs can be found in Supplemental Type Certificate ST01950LA (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgSTC.nsf/0/196ec7e864607b5b862573c5007cb3b5/$FILE/ST01950LA.pdf*).

(h) Inspection

For airplanes on which the actions specified in Boeing Alert Service Bulletin 757–28A0078, dated July 16, 2008, or 757–28A0079, dated July 16, 2008, have been accomplished before the effective date of this AD: Within 60 months after the effective date of this AD, do a general visual inspection to verify that each GFI installation screw has enough grip length to hold the screws in each nut plate, and do applicable electrical bonding resistance measurements between the GFI relays and their installation panel to verify that applicable bonding requirements are met. If the screw does not have enough grip length, before further flight, install a longer screw. Do all actions in accordance with Part 2 of the Accomplishment Instructions of Boeing Service Bulletin 757–28A0078, Revision 2, dated January 11, 2012 (for Model 757–200, –200CB, and –200PF series airplanes); or Boeing Service Bulletin 757–28A0079, Revision 2, dated January 11, 2012 (for Model 757–300 series airplanes).

(i) Credit for Previous Actions

This paragraph provides credit for the actions required by this AD, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 757–28A0078 or 757–28A0079, both Revision 1, both dated August 24, 2010.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Related Information

For more information about this AD, contact Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, Seattle ACO, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 917–6482; fax: (425) 917–6590; email: *Georgios.Roussos@faa.gov.* Or, email information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(l) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information:

(i) Boeing Service Bulletin 757–28A0078, Revision 2, dated January 11, 2012.

(ii) Boeing Service Bulletin 757–28A0079, Revision 2, dated January 11, 2012.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–6642 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0821; Directorate Identifier 2010–NE–30–AD; Amendment 39–17004; AD 2012–06–23]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Rolls-Royce plc (RR) RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines. That AD currently requires initial and repetitive ultrasonic inspections (UIs) of certain low-pressure (LP) compressor blades identified by serial number (S/N). This AD requires the same actions but expands the population of blades. This AD was prompted by RR concluding that additional blades affected must be inspected. We are issuing this AD to prevent LP compressor blades from failing due to blade root cracks, which could lead to uncontained engine failure and damage to the airplane.

DATES: This AD is effective April 20, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 20, 2012.

We must receive any comments on this AD by May 21, 2012.

ADDRESSES: You may send comments by any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ, telephone: 011–44–1332–242424; fax: 011–44–1332–245418, or email:*http://www.rolls-royce.com/contact/civil_team.jsp.* You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7143; fax: 781–238–7199; email: *alan.strom@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On April 1, 2011, we issued AD 2011–08–07, Amendment 39–16657 (76 FR 24798, May 3, 2011), for all RR RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines. On September 9, 2011, we also issued a correction (76 FR 59013, September 23, 2011) to that AD. That AD requires initial and repetitive UIs of certain LP compressor blades identified by S/N. That AD resulted from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We issued that AD to prevent LP compressor blades from failing due to blade root cracks, which could lead to uncontained engine failure and damage to the airplane.

Actions Since AD Was Issued

Since we issued AD 2011–08–07 (76 FR 24798, May 3, 2011), RR determined that additional S/Ns of LP compressor blades are affected and require inspection. EASA has also issued AD 2012–0025, dated February 8, 2012, to expand the population of affected LP compressor blades operating in Europe. About 2,300 of the added blades require inspection within 70 cycles of the effective date of the AD since those blades have more fatigue damage from prior use.

This superseding AD differs from EASA AD 2012–0025. This AD only requires inspection of LP compressor blades that are listed in Appendices 3A through 3G of RR Alert Service Bulletin (ASB) No. RB.211–72–AG244, Revision 4, dated December 22, 2011. We are developing another AD to require inspection of LP compressor blades listed in Appendices 3H through 3L of RR ASB No. RB.211–72–AG244, Revision 4, dated December 22, 2011.

Relevant Service Information

We reviewed Rolls-Royce plc ASB No. RB.211–72–AG244, Revision 4, dated December 22, 2011. The service information describes procedures for performing UIs of the LP compressor blades.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously except that this AD only requires inspection of LP compressor blades that are listed in Appendices 3A through 3G of RR ASB No. RB.211–72–AG244, Revision 4, dated December 22, 2011.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because about 2,300 LP compressor blades require inspection within 70 cycles after the effective date of the AD. This equates to about one month's time for Trent 800 engines flying two flights per day. Therefore, we find that notice and opportunity for prior public comment are impracticable and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments before it becomes effective. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2010–0821 and directorate identifier 2010–NE–30–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 158 engines installed on airplanes of U.S. registry. We also estimate that it will take about 3 hours per engine inspection, and six inspections per year. The average labor rate is $85 per work-hour. We estimate that one LP compressor blade per year will need replacement, at a cost of about $82,000. Based on these figures, we estimate the annual cost of the AD on U.S. operators to be $323,740. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII,

Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2011–08–07, Amendment 39–16657 (76 FR 24798, May 3, 2011) and adding the following new AD:

2012–06–23 Rolls-Royce plc: Amendment 39–17004; Docket No. FAA–2010–0821; Directorate Identifier 2010–NE–30–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 20, 2012.

(b) Affected ADs

This AD supersedes AD 2011–08–07, Amendment 39–16657 (76 FR 24798, May 3, 2011).

(c) Applicability

This AD applies to Rolls-Royce plc (RR) RB211–Trent 875–17, RB211–Trent 877–17, RB211–Trent 884–17, RB211–Trent 884B–17, RB211–Trent 892–17, RB211–Trent 892B–17, and RB211–Trent 895–17 turbofan engines.

(d) Unsafe Condition

This AD was prompted by the determination by RR that additional serial numbers (S/Ns) of low-pressure (LP) compressor blades are affected and need to be inspected. We are issuing this AD to prevent LP compressor blades from failing due to blade root cracks, which could lead to uncontained engine failure and damage to the airplane.

(e) Actions and Compliance

Unless already done, do the following actions.

(1) Perform an initial ultrasonic inspection (UI) of the affected LP compressor blades identified by S/N in Appendices 3A through 3G of RR Alert Service Bulletin (ASB) No. RB.211–72–AG244, Revision 4, dated December 22, 2011. Use Table 1 of this AD to determine your initial inspection threshold.

TABLE 1—INITIAL INSPECTION THRESHOLDS

Appendix number of RR ASB No. RB.211–72–AG244, revision 4, that identifies affected LP compressor blades by S/N	Initial inspection threshold
3A and 3B	Within 70 flight cycles after the effective date of this AD.
3C	Within 10 months after the effective date of this AD.
3D	Within 22 months after the effective date of this AD.
3E	Within 34 months after the effective date of this AD.
3F	Within 46 months after the effective date of this AD.
3G	Within 58 months after the effective date of this AD.

(2) Thereafter, perform repetitive UIs of the affected LP compressor blades within every 100 flight cycles.

(3) Use paragraphs 3.A.(1) through 3.A.(2) of Accomplishment Instructions of RR ASB No. RB.211–72–AG244, Revision 4, dated December 22, 2011, and paragraphs 1 through 3.B. of Appendix 1 of that ASB, or paragraphs 3.B.(1) through 3.B.(3) of Accomplishment Instructions of RR ASB No. RB.211–72–AG244, Revision 4, dated December 22, 2011, and paragraphs 1 through 3.C. of Appendix 2 of that ASB, to perform the UIs.

(4) Do not return to service any engine with blades that failed the inspection required by this AD.

(5) For blades that are removed from the engine and pass inspection, re-apply dry film lubricant, and install all blades in their original position.

(6) After the effective date of this AD, do not install any affected LP compressor blade unless it has passed the initial and repetitive UIs required by this AD.

(f) Credit for Previous Actions

You may take credit for the initial inspection that is required by paragraph (e)(1) of this AD if you performed the initial inspection before the effective date of this AD using RR ASB No. RB.211–72–AG244, dated August 7, 2009; ASB No. RB.211–72–AG244, Revision 1, dated January 26, 2010; ASB No. RB.211–72–AG244, Revision 2, dated August 18, 2011; or ASB No. RB.211–72–AG244, Revision 3, dated December 13, 2011.

(g) FAA AD Differences

This AD differs from EASA AD 2012–0025, dated February 8, 2012. That AD requires inspecting LP compressor blades that are listed in Appendices 3A through 3L of RR ASB No. RB.211–72–AG244, Revision 4, dated December 22, 2011, whereas this AD only requires inspection of LP compressor blades that are listed in Appendices 3A through 3G of the ASB.

(h) Alternative Methods of Compliance

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Alan Strom, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7143; fax: 781–238–7199; email: *alan.strom@faa.gov.*

(2) Refer to EASA AD 2012–0025, dated February 8, 2012, for related information.

(j) Material Incorporated by Reference

(1) You must use Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AG244, Revision 4, dated December 22, 2011,

Appendix 1, Appendix 2, and Appendices 3A through 3G of that ASB, to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, England, DE248BJ, telephone: 011–44–1332–242424; fax: 011–44–1332–245418, or email: *http://www.rolls-royce.com/contact/civil_team.jsp.*

(3) You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr_locations.html.*

Issued in Burlington, Massachusetts, on March 20, 2012.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2012–8163 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0858; Directorate Identifier 2010–NM–183–AD; Amendment 39–16974; AD 2012–05–02]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes. This AD was prompted by reports of heat damage to the inner wall of the thrust reversers, which could result in separation of adjacent components and consequent structural damage to the airplane, damage to other airplanes, and injury to people on the ground. This AD requires modifying the thrust reverser inner walls, inspecting for damage of the upper and lower inner wall insulation blankets, measuring the electrical conductivity on the aluminum upper compression pads 2 and 3 as applicable, inspecting for discrepancies of the inner wall of the thrust reverser, and corrective actions if necessary. This AD also requires, for certain airplanes, doing various concurrent actions (including replacing the inner wall blanket insulation, installing updated full-authority digital electronic control software, and modifying the thrust reverser inner wall and insulation blankets). We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective May 10, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 10, 2012.

ADDRESSES: For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For CFM service information identified in this AD, contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215; phone: 513–552–2800; fax: 513–552–2816; Internet: *http://www.cfm56.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Chris Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6496; fax: 425–917–6590; email: *chris.r.parker@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. That NPRM was published in the **Federal Register** on September 27, 2010 (75 FR 59167). That NPRM proposed to require modifying the inner walls of the thrust reverser (TR), inspecting for damage of the upper and lower inner wall insulation blankets, measuring the electrical conductivity on the aluminum upper compression pads 2 and 3 as applicable, inspecting for discrepancies of the TR inner wall, and corrective actions if necessary. That NPRM also proposed to require, for certain airplanes, doing various concurrent actions (including replacing the inner wall blanket insulation, installing updated full-authority digital electronic control software, and modifying the TR inner wall and insulation blankets).

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal (75 FR 59167, September 27, 2010) and the FAA's response to each comment.

Request To Withdraw NPRM (75 FR 59167, September 27, 2010)

Despite fully supporting the implementation of the actions of the NPRM (75 FR 59167, September 27, 2010), Boeing stated that it does not consider thermal overheat on the TR inner walls on the affected airplanes to be a safety issue. The structural integrity of the inner wall may deteriorate due to pre-cooler air ingress behind the blankets, but the Boeing Safety Review Board determined that this does not constitute a safety hazard to the airplane or to persons on the ground. Boeing identified support data for this determination, which included a safety assessment, full-scale test demonstration, and structural analysis.

We infer that Boeing wants us to withdraw the NPRM (75 FR 59167, September 27, 2010), because there is no unsafe condition. We disagree. The thermal overheat could affect the structural capability of the inner wall of the thrust reverser such that, if a pneumatic duct bursts, the inner wall could fail, causing uncontrollable asymmetric thrust during a rejected takeoff, or causing large parts to hit the fuselage or empennage in flight.

Request To Remove Model 737–900ER

Boeing requested that we remove Model 737–900ER series airplanes from the applicability of the NPRM (75 FR 59167, September 27, 2010), since configuration control prevents the intermix of the affected TRs on these airplanes.

We agree. The TR inner walls on Model 737–900ER series airplanes have not been identified as having a thermal overheat issue. We have therefore removed these airplanes from the applicability of this AD.

Comments on EASA Proposed AD (75 FR 59167, September 27, 2010)

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, issued Proposed AD 10–087, dated September 30, 2010 (which has since been issued as EASA AD 2010–0244R1, dated May 17, 2011, and corresponds to FAA NPRM (75 FR 59167, September 27, 2010)). Boeing reported that it had requested certain changes (to the compliance time and applicability) to the EASA Proposed AD, and provided a list of the specific requests including changing the compliance time and eliminating language regarding certain ''specific airplane(s).''

We find these comments to be addressed to EASA Proposed AD 10–087 and do not apply to the FAA proposed AD (75 FR 59167, September 27, 2010). The applicability is the same in the EASA and FAA ADs, and accounts for Boeing's comment concerning Model 737–900ER series airplanes. The compliance time of the EASA AD is different from that of the FAA AD, based on differing AD processes and publication schedules. We have not changed the final rule regarding this issue.

Request To Revise Cost Estimate

Continental Airlines (CAL) disagreed with the fleet cost estimates for the actions specified in Boeing Service Bulletin 737–78–1088, dated May 12, 2010, as proposed in paragraph (i) of the NPRM (75 FR 59167, September 27, 2010). CAL explained that inner wall delamination requires the repair to be performed in an autoclave, which requires disassembly of the TR. (There are two half TR sections per engine.) CAL stated that returning each TR half to service after disassembly and inspection of components could cost from $16,000 to $56,000, depending on the hours and cycles on the TR.

We disagree with the request to revise the cost estimate. The economic analysis of the NPRM (75 FR 59167, September 27, 2010) did not consider the cost of conditional actions, such as repairing damage detected during a required inspection. The economic analysis of this AD is limited to the cost of actions that are required of every operator. Such conditional repairs would be required—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure that the airplane is operated in an airworthy condition, as required by the Federal Aviation Regulations. We would have no way of determining these on-condition costs, which would depend on the TR condition and vary from operator to operator. We have not changed the final rule regarding this issue.

Request To Extend Compliance Time for Modification

Three commenters requested that we revise the 24-month compliance time for the modification specified in paragraph (g) of the NPRM (75 FR 59167, September 27, 2010).

CAL requested that we extend the compliance time to 30 months, when 116 of its airplanes will also require the inspection specified in paragraph (i) of the proposed AD (75 FR 59167, September 27, 2010). This compliance time extension would reduce CAL's modifications on its fleet from 5 airplanes to 4 airplanes per month. CAL added that, even with this extended compliance time, it would be difficult to modify 4 (16 TR halves) per month because of the limited number of spare TR halves available.

Southwest Airlines (SWA) reported that it would need to modify 39 of its 946 TRs each month to meet a 24-month compliance time, and therefore suggested a stepped compliance time schedule, ranging from 12 months to 48 months, based on the service life of the TR.

American Airlines (AAL) stated that the 24-month compliance time will have a significant impact on its ''light'' C check.

We disagree to extend the compliance time for paragraph (g) of this AD. In developing an appropriate compliance time for these actions, we considered the urgency associated with the subject unsafe condition, the practical aspect of accomplishing the required modification and the normal scheduled maintenance times for most affected operators. In consideration of these items and of parts availability, we have determined that the proposed 24-month compliance time for the modification will ensure an acceptable level of safety. According to the provisions of paragraph (o) of this AD, however, we may approve requests to adjust the compliance time if the request includes data substantiating that the new compliance time would provide an acceptable level of safety. We have not changed the final rule regarding this issue.

Request To Clarify Service Information

AAL requested that the service instructions for Boeing Service Bulletin 737–78–1082, dated March 25, 2010; and Boeing Service Bulletin 737–78–1088, dated May 12, 2010; be revised to incorporate general findings and clarifications. AAL asserted that not addressing these issues could adversely affect accomplishment of these service bulletins.

We agree that additional clarification would be beneficial in the identified areas of Boeing Service Bulletin 737–78–1082, dated March 25, 2010; and Boeing Service Bulletin 737–78–1088, dated May 12, 2010. Such minor clarifications, however, are not necessary for compliance with this AD. We have provided AAL's comments to Boeing for review and incorporation, as necessary, into future revisions of those service bulletins, which might be approved as a global alternative method of compliance with this AD if we can substantiate that the revision provides an acceptable level of safety. We have not changed the final rule regarding this issue.

Request for Optional Repair

SWA requested that we revise paragraph (i) of the NPRM (75 FR 59167, September 27, 2010) to allow cold-bonding methods for repairing damaged areas, in addition to the autoclave procedures specified in Boeing Service Bulletin 737–78–1088, dated May 12, 2010. That service bulletin permits curing repaired areas only as specified in the Boeing 737–700 Structural Repair Manual (SRM), which specifies the autoclave procedures. According to SWA, this would require operators to pull TRs for repair at an approved overhaul facility, thereby increasing the turn time for repairs since only five Boeing-approved overhaul facilities have autoclave capabilities.

We disagree with the request to allow the cold-bonding procedure. Boeing and the FAA are unaware of any cold-bonding methods that would be applicable to the composite TR inner wall on the affected airplanes. Current SRM repair methods for composite structure involve either autoclave or vacuum bag/heat blanket cure methods. But Boeing Service Bulletin 737–78–1088, dated May 12, 2010, and the

alternative Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010, limit the SRM repairs for the TR inner wall to autoclave cures. For the areas being repaired on the inner wall, the additional plies required to make a structurally adequate vacuum bag-cured repair are excessive and would make the inner wall unusable. We therefore find it appropriate for those service bulletins to specify autoclave curing only. In addition, Boeing has evaluated the potential number of repairs that would be done at overhaul facilities with autoclave capabilities, and does not foresee a problem addressing the corrective actions on the affected airplanes within the compliance times. We have not changed the final rule regarding this issue.

Request To Revise Compliance Time for Certain Inspections

SWA requested that we revise paragraph (i) of the proposed AD (75 FR 59167, September 27, 2010), which proposed certain inspections in accordance with Boeing Service Bulletin 737–78–1088, dated May 12, 2010. SWA recommended a minimum of 48 months, ''per [this service bulletin],'' for these actions. (The compliance time in the proposed AD ranged from 30 to 96 months.)

We disagree with the request. As stated previously, when we developed the compliance time for this AD action we considered the safety implications of the identified unsafe condition, the average utilization rate of the affected fleet, the practical aspects of performing the inspections on the fleet during regular maintenance periods, and the availability of replacement parts. We have determined that the proposed compliance times are appropriate. We have not changed the final rule regarding this issue.

Request for Clarification of Certain Procedures

AAL described difficulty in accomplishing the actions specified in Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010 (paragraph (n) of the NPRM (75 FR 59167, September 27, 2010)): Seals must be installed individually, the fire seal can tear and need replacement, and the roller edge of the insulation blanket interferes with the upper fire seal support flange insulations. AAL received some additional installation instructions from Boeing and recommended that they be included in this service bulletin.

We agree that additional clarification may be beneficial, but we find that accomplishing the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010, will address the identified unsafe condition. We have provided AAL's comments to Boeing for review and incorporation, as necessary, into a future service bulletin revision, which might be approved as an alternative method of compliance with this AD if we can substantiate that the revision provides an acceptable level of safety. We have not changed the final rule regarding this issue.

Additional Changes to NPRM (75 FR 59167, September 27, 2010)

Paragraph (n) of this AD specifies the optional accomplishment of certain actions in accordance with Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010. That service bulletin incorrectly notes that removal of a compression pad assembly is not necessary if the adjacent inner wall area does not show signs of heat damage, because the compression pad assembly is made from titanium. This AD requires removing the affected compression pads and inspecting the underlying structures as part of this optional action, regardless whether a pad assembly is made of titanium or aluminum alloy. Boeing has indicated that the incorrect notes may be removed in a future revision of that service bulletin; if so, we may approve the revised service bulletin as a global AMOC with the requirements of this AD.

We have revised or added certain headers in this AD. We have also revised the wording in paragraphs (l) and (n) of this AD; this change has not changed the intent of those paragraphs.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 710 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $85 per hour.

ESTIMATED COSTS

Actions (service bulletin)	Work hours	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Modification (Boeing Service Bulletin 737–78–1082, dated March 25, 2010).	14 per engine	$2,065 or $3,702	$4,445 or $6,082	710	Up to $4,318,220.
Insulation replacement (Boeing Service Bulletin 737–78–1063, Revision 2, dated October 7, 1994).	18 per engine	$0	$3,060	15	$45,900.
Software update (CFM CFM56–7B Service Bulletin 73–0135, dated March 30, 2007).	1	$0	$85	Up to 710	Up to $60,350.
Inspections (Boeing Service Bulletin 737–78–1088, dated May 12, 2010).	35	$0	$2,975	710	$2,112,250.
Modifications (Boeing Service Bulletin 737–78–1069, Revision 4, dated June 16, 2005).	110	$0	$9,350	306	$2,861,100.
Inspections and modification (Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010) (if done as an option to Boeing Service Bulletin 737–78–1088 and Boeing Service Bulletin 737–78–1082).	37 per engine	$2,070 or $3,391	$8,360 or $9,681	Optional action	Optional action.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2012–05–02 The Boeing Company: Amendment 39–16974; Docket No. FAA–2010–0858; Directorate Identifier 2010–NM–183–AD.

(a) Effective Date

This AD is effective May 10, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category; as identified in Boeing Service Bulletin 737–78–1082, dated March 25, 2010.

(d) Subject

Air Transport Association (ATA) of America Code 78: Engine exhaust.

(e) Unsafe Condition

This AD results from reports of heat damage to the inner wall of the thrust reversers. The Federal Aviation Administration is issuing this AD to detect and correct such heat damage, which could result in separation of adjacent components and consequent structural damage to the airplane, damage to other airplanes, and injury to people on the ground.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Modification of Thrust Reverser Inner Wall

Except as required by paragraph (m) of this AD: Within 24 months after the effective date of this AD, modify the thrust reverser inner wall, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–78–1082, dated March 25, 2010.

(h) Actions Concurrent With Paragraph (g) of This AD

Before or concurrently with accomplishment of the requirements of paragraph (g) of this AD, do the actions specified in paragraphs (h)(1) and (h)(2) of this AD, as applicable.

(1) For airplanes identified in Boeing Service Bulletin 737–78–1063, Revision 2, dated October 7, 1999: Replace the inner wall blanket insulation, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–78–1063, Revision 2, dated October 7, 1999.

(2) For airplanes equipped with engines identified in CFM CFM56–7B Service Bulletin 73–0135, dated March 30, 2007: Install updated full-authority digital electronic control (FADEC) software, in accordance with the Accomplishment Instructions of CFM CFM56–7B Service Bulletin 73–0135, dated March 30, 2007.

(i) Inspection/Measurement

At the applicable time specified in paragraph (j) of this AD: Do the actions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–78–1088, dated May 12, 2010. If any damage or discrepancy is found, before further flight, do all applicable corrective actions, in accordance with Accomplishment Instructions of Boeing Service Bulletin 737–78–1088, dated May 12, 2010; except as required by paragraph (k) of this AD; and except where the service bulletin refers to ''unsatisfactory'' findings, this AD assumes those parts or locations are ''unserviceable.''

(1) Do a detailed inspection for damage of the engine side and inner wall side of the upper and lower insulation blankets.

(2) Measure the electrical conductivity on the aluminum upper compression pads 2 and 3, as applicable.

(3) Inspect for discrepancies of the thrust reverser inner wall (including an ultrasonic inspection for interply delamination and skin-to-core disbond, a detailed inspection for signs of heat damage as applicable, and a detailed inspection for loose fasteners where the inner wall attaches to the hinge beam and at the fasteners for the compression pads).

(j) Compliance Times for Paragraph (i) of This AD

Do the actions specified in paragraph (i) of this AD at the applicable time specified in paragraph (j)(1), (j)(2), (j)(3), (j)(4), or (j)(5) of this AD.

(1) For airplanes with thrust reverser part number (P/N) 315A2295–003 through 315A2295–154 inclusive: Do the actions within 30 months after the effective date of this AD.

(2) For airplanes with thrust reverser P/N 315A2295–155 through 315A2295–174 inclusive: Do the actions within 60 months after the effective date of this AD.

(3) For airplanes with thrust reverser P/N 315A2295–175 through 315A2295–190 inclusive: Do the actions within 72 months after the effective date of this AD.

(4) For airplanes with thrust reverser P/N 315A2295–191 through 315A2295–198 inclusive: Do the actions within 84 months after the effective date of this AD.

(5) For airplanes with thrust reverser P/N 315A2295–199 through 315A2295–202 inclusive: Do the actions within 96 months after the effective date of this AD.

(k) Exception to Boeing Service Bulletin 737–78–1088 Procedures

Where Boeing Service Bulletin 737–78–1088, dated May 12, 2010, specifies to contact Boeing for appropriate action, repair before further flight in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Concurrent Actions for Paragraph (i) of This AD

For airplanes identified in Boeing Service Bulletin 737–78–1069, Revision 4, dated June 16, 2005: Before or concurrently with the accomplishment of the requirements of paragraph (i) of this AD, modify the thrust reverser inner wall and insulation blankets, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–78–1069, Revision 4, dated June 16, 2005. This paragraph provides credit for the actions specified in Boeing Service Bulletin 737–78–1069, Revision 4, dated June 16, 2005, if those actions were performed before the effective date of this AD using Boeing Service Bulletin 737–78–1069, Revision 1, dated June 13, 2002; Revision 2, dated February 6, 2003; or Revision 3, dated August 5, 2004.

(m) Concurrent Actions for Paragraph (i) of This AD Done Before the Compliance Time for paragraph (g) of This AD

If the actions required by paragraph (i) of this AD are done before the compliance time specified in paragraph (g) of this AD: Before or concurrently with the accomplishment of the actions required by paragraph (i) of this AD, the modification required by paragraph (g) of this AD must be done.

(n) Option to Requirements of Paragraphs (g) and (i) of This AD

Accomplishment of all of the actions (including inspections and modification) specified in Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010, within 24 months after the effective date of this AD, is acceptable for compliance with the requirements of paragraphs (g) and (i) of this AD; except that this AD requires removing the affected compression pads and inspecting the underlying structures regardless whether a pad assembly is made of titanium or aluminum alloy. Accomplishment of all of the actions (including inspections and modification) specified in Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010, within 24 months after the effective date of this AD, is acceptable for compliance with the requirements of this AD provided applicable repairs are done before further flight, and provided the applicable actions specified in paragraphs (h)(1), (h)(2), and (l) of this AD have been done. This paragraph provides credit for the actions specified in Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010, if those actions were done before the effective date of this AD using Boeing Service Bulletin 737–78–1079, dated August 6, 2007; or Revision 1, dated December 17, 2007.

(o) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(p) Related Information

For more information about this AD, contact Chris R. Parker, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: 425–917–6496; fax: 425–917–6590; email: *chris.r.parker@faa.gov.*

(q) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Boeing Service Bulletin 737–78–1063, Revision 2, dated October 7, 1999.

(ii) Boeing Service Bulletin 737–78–1069, Revision 4, dated June 16, 2005.

(iii) Boeing Service Bulletin 737–78–1082, dated March 25, 2010.

(iv) Boeing Service Bulletin 737–78–1088, dated May 12, 2010.

(v) CFM CFM56–7B Service Bulletin 73–0135, dated March 30, 2007.

(2) If you accomplish the optional actions specified by this AD, you must use the following service information to perform those actions, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information:

(i) Boeing Service Bulletin 737–78–1079, Revision 2, dated June 7, 2010.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; email *me.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.* For CFM service information identified in this AD, contact CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215; phone: 513–552–2800; fax: 513–552–2816; Internet: *http://www.cfm56.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on February 22, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–8038 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0331; Directorate Identifier 2011–NM–119–AD; Amendment 39–17008; AD 2012–07–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Airbus Model A340–500 and –600 series airplanes. This AD requires repetitive inspections of the forward and aft attachment fittings and of the swan neck for cracks, and replacing the attachment fittings and the swan neck with serviceable ones if necessary. This AD was prompted by reports of cracks on the forward attachment fittings of the left and right sides of the forward hinge of the nose landing gear (NLG) aft door. We are issuing this AD to detect and correct cracks of the forward attachment fittings and the swan neck, which could lead to the in-flight detachment of the NLG aft door and result in injury to persons on the ground or damage to the airplane.

DATES: This AD becomes effective April 20, 2012.

The Director of the Federal Register approved the incorporation by reference of the service information listed in the AD as of April 20, 2012.

We must receive comments on this AD by May 21, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations,

M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0088, dated May 13, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An operator has reported cracks on the aft hinge forward (FWD) fittings (hinge #5) of the NLG aft doors (Right Hand (RH) side or Left Hand (LH) side). The cracks extended by approximately 15 millimetres from the upper hole to the edge of the fittings.
>
> Investigation has revealed that these cracks have initiated due to fatigue loads and propagated under bending load.
>
> Cracks on the NLG aft door fittings, if not corrected, could lead to the inflight detachment of the door, possibly resulting in injury to persons on the ground or damage to the aeroplane.
>
> In order to maintain the structural integrity of the NLG aft door aft hinge attachment fittings, EASA issued EASA AD 2010–0028 [which corresponds to FAA AD 2011–08–03, Amendment 39–16653 (71 FR 20496, April 13, 2011)], which requires repetitive inspections at hinge #5.
>
> Additional investigations have shown that inspections are also necessary for the hinge #4.
>
> For the reasons described above, this [EASA] AD requires repetitive [detailed] inspections of the FWD and AFT attachment fittings and [high frequency eddy current inspections] of the swan neck at the forward hinge #4 and their replacement, as necessary.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–52–5017, including Appendices 1 and 2, dated February 17, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

Although the MCAI or service information allows further flight after cracks are found, paragraph (g) of this AD requires that you replace both the forward and aft fittings before further flight if any crack is found.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0331; Directorate Identifier 2011–NM–119–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–07–02 Airbus: Amendment 39–17008. Docket No. FAA–2012–0331; Directorate Identifier 2011–NM–119–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective April 20, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Model A340–541 and –642 airplanes, certificated in any category, all manufacturer serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 52: Doors.

(e) Reason

This AD was prompted by reports of cracks on the forward attachment fittings of the left and right sides of the forward hinge of the nose landing gear (NLG) aft door. We are issuing this AD to detect and correct cracks of the forward attachment fittings and the swan neck, which could lead to the in-flight detachment of the NLG aft door and result in injury to persons on the ground or damage to the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Repetitive Inspections and Corrective Action of the Forward and Aft Attachment Fittings of the Forward Hinge (#4) of the NLG Aft Door

Before the accumulation of 4,500 total flight cycles or within 50 flight cycles after the effective date of this AD, whichever occurs later: Do a detailed visual inspection for any cracking of the forward attachment fittings of the forward hinge (#4) of the NLG aft door of the left side and right side doors, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5017, excluding Appendices 1 and 2, dated February 17, 2011.

(1) If no crack is found: Thereafter repeat the inspection required in paragraph (g) of this AD at intervals not to exceed 500 flight cycles.

(2) If any crack is found during any inspection required in paragraph (g) of this AD: Before further flight, replace both the forward and aft fittings with serviceable fittings on the forward hinge (#4) of the affected NLG aft door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5017, excluding Appendices 1 and 2, dated February 17, 2011.

(h) Action Requirement for Part Replacement of the Forward and Aft Attachment Fittings of the Forward Hinge (#4) of the NLG Aft Door

If any forward and aft attachment fittings of the forward hinge (#4) of the NLG aft door have been replaced as required in paragraph (g)(2) of this AD: Before the accumulation of 4,500 flight cycles on the forward fitting, do the inspection required in paragraph (g) of this AD.

(i) Repetitive Inspections and Corrective Actions of the Swan Neck of the Forward Hinge (#4) of the NLG Aft Door

Before the accumulation of 4,500 total flight cycles or within 50 flight cycles after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection for any cracking of the swan neck of the forward hinge (#4) of the NLG aft door of the left side and right side doors, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5017, excluding Appendices 1 and 2, dated February 17, 2011.

(1) If no crack is found: Thereafter repeat the inspection required in paragraph (i) of this AD at intervals not to exceed 500 flight cycles.

(2) If any crack is found during any inspection required in paragraphs (i) of this AD: Before further flight, replace the swan neck with a serviceable swan neck on the forward hinge (#4) of the affected NLG aft door, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–52–5017, excluding Appendices 1 and 2, dated February 17, 2011.

(j) Action Requirement for Part Replacement of the Swan Neck of the Forward Hinge (#4) of the NLG Aft Door

If any swan neck of the NLG aft door forward hinge (#4) is replaced as specified in paragraph (i)(2) of this AD: Before the accumulation of 4,500 flight cycles on the swan neck, repeat the inspection required in paragraph (i) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to Attn: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Special Flight Permits:* Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

(l) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2011–0088, dated May 13, 2011; and Airbus Mandatory Service Bulletin A340–52–5017, excluding Appendices 1 and 2, dated February 17, 2011; for related information.

(m) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(2) Airbus Mandatory Service Bulletin A340–52–5017, excluding Appendices 1 and 2, dated February 17, 2011.

(3) For Airbus service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

(4) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 23, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7848 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0355; Directorate Identifier 2011–SW–013–AD; Amendment 39–17007; AD 2012–07–01]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB412 helicopters with certain tail rotor blades (blades) installed. This AD requires, before further flight, removing and replacing each affected blade with an airworthy blade. This AD is prompted by incidents where a blade tip weight separated from a blade in flight on other model helicopters with common part-numbered blades. It has been determined that this unsafe condition may also exist on the specified Agusta model helicopters. The actions specified in this AD are intended to prevent loss of the blade tip weight, loss of a blade, and subsequent loss of control of the helicopter.

DATES: This AD becomes effective April 20, 2012.

We must receive comments on this AD by June 4, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, any comments received, and other information. The street address for the Docket Operations Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not provide you with notice and an opportunity to provide your comments prior to it becoming effective. However, we invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that resulted from adopting this AD. The most helpful comments reference a specific portion of the AD, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit them only one time. We will file in the docket all comments that we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this rulemaking during the comment period. We will consider all the comments we receive and may conduct additional rulemaking based on those comments.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Emergency AD No.: 2010–0272–E, dated December 22, 2010 (EAD 2010–0272–E), to correct an unsafe condition for the Agusta Model AB204B, AB205A–1, AB206A, AB206B, AB212, AB412 and AB412EP helicopters. EASA advises that Rotor Blades Inc. (RBI) informed Bell Helicopter Textron Inc. (BHTI) about four incidents of a blade tip weight separating from a blade in flight, and the subsequent investigation showed that these occurrences were caused by improper repair actions by RBI. EASA states that to address this safety concern, BHTI issued several alert service bulletins (ASBs) applicable to U.S. and Canada manufactured Bell type designs. In response to these ASBs, Transport Canada issued Emergency AD CF–2007–21R1 (dated November 30, 2010), and the FAA issued Emergency AD 2010–26–52 (dated December 10, 2010). EASA states that although the unsafe condition has been detected only on parts manufactured by BHTI and installed on BHTI helicopters, the possibility exists, due to part number commonality between the rotor blade type designs, that the affected parts may be installed on corresponding Agusta helicopter types, among others, for helicopter models not type certificated in the U.S. Agusta has issued Bollettino Tecnico (BT) 412–130, dated December 20, 2010 (BT 412–130), to inform affected owners and operators of this unsafe condition, and EASA issued EAD 2010–0272–E in response to the BT to address this unsafe condition.

FAA's Determination

These helicopters have been approved by the aviation authority of Italy and are approved for operation in the United States. Pursuant to our bilateral agreement with Italy, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Related Service Information

We reviewed BT 412–130, which references Bell Helicopter ASB No. 412–07–123 Revision B, dated November 22, 2010, and specifies removing any affected tail rotor blade, returning the removed blade to Agusta, and replacing it with an airworthy blade. EASA classified this BT as mandatory and issued EAD 2010–0272–E to ensure the continued airworthiness of these helicopters.

AD Requirements

This AD requires, before further flight, unless already accomplished, replacing any affected blade with an airworthy blade. An airworthy blade is one that has a part number and a serial number

not included in the Applicability section of this AD. Affected blades are those having a part number and serial number as follows:

Part No.	Serial No.
212–010–750–105	A–11923.
212–010–750–105FM	A–10090, A–10836, A–10857, A–11207, A–11332, A–11617, A–11828, A–12043, or A–12091.
212–010–750–113	A–14953, A–15090, or CS–12702.
212–010–750–113FM	A–12240, A–12286, A–12296, A–12398, A–12640, A–12670, A–12789, A–13033, A–13088 A–13096, A–13106 A–13134, A–13199, A–13264, A–13366, or A–13539.
212–010–750–133	A–15602.

No helicopters of this type are registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Registry in the future.

Differences Between This AD and the EASA AD

EASA AD 2010–0272–E applies to Agusta S.p.A. Model AB204B, AB205A–1, AB206A, AB212, AB412, and AB412EP helicopters. This AD only applies to the U.S. type certificated Agusta Model AB412 helicopters.

Costs of Compliance

There are no costs of compliance because no helicopters of this type design are on the U.S. Registry.

FAA's Justification and Determination of the Effective Date

Since there are currently no affected helicopters on the U.S. Registry, we believe it is unlikely that we would receive any adverse comments or useful information about this AD from U.S. Operators. Since an unsafe condition exists that requires the immediate adoption of this AD, we have determined that notice and opportunity for prior public comment before issuing this AD are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new Airworthiness Directive (AD):

2012–07–01 Agusta S.p.A.: Amendment 39–17007; Docket No. FAA–2012–0355; Directorate Identifier 2011–SW–013–AD.

(a) Applicability

This AD applies to Agusta S.p.A. Model AB412 helicopters with the following tail rotor blades installed:

Part No.	Serial No.
212–010–750–105	A–11923.
212–010–750–105FM	A–10090, A–10836, A–10857, A–11207, A–11332, A–11617, A–11828, A–12043, or A–12091.
212–010–750–113	A–14953, A–15090, or CS–12702.
212–010–750–113FM	A–12240, A–12286, A–12296, A–12398, A–12640, A–12670, A–12789, A–13033, A–13088, A–13096, A–13106, A–13134, A–13199, A–13264, A–13366, or A–13539.
212–010–750–133	A–15602.

(b) Unsafe Condition

This AD defines the unsafe condition as separation of the tail rotor blade (blade) tip weight from a blade in flight, causing vibration. This condition could result in loss of a tail rotor blade and subsequent loss of control of the helicopter.

(c) Effective Date

This airworthiness directive (AD) becomes effective April 20, 2012.

(d) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(e) Required Actions

Before further flight, replace any affected blade with an airworthy blade, defined as one that has a part number and a serial number not listed in the Applicability section of this AD.

(f) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Sharon Miles, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5110; email *sharon.y.miles@faa.gov.*

(2) For operations conducted under a Part 119 operating certificate or under Part 91, Subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(g) Additional Information

(1) Agusta Bollettino Tecnico 412–130, dated December 20, 2010, which is not incorporated by reference, contains additional information about the subject of this AD. For service information identified in this AD, contact Agusta Westland, Customer Support & Services, Via Per Tornavento 15, 21019 Somma Lombardo (VA) Italy, ATTN: Giovanni Cecchelli; telephone 39–0331–711133; fax 39 0331 711180; or at *http://www.agustawestland.com/technical-bullettins.* You may review a copy of the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

(2) The subject of this AD is addressed in the European Aviation Safety Agency Emergency AD No.: 2010–0272–E, dated December 22, 2010.

(h) Subject

Joint Aircraft Service Component (JASC) Code: 6410, tail rotor blades.

Issued in Fort Worth, Texas, on March 26, 2012.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2012–8058 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1064; Directorate Identifier 2011–NM–075–AD; Amendment 39–16984; AD 2012–06–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–100–1A10 (Challenger 300) Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes. This AD was prompted by reports that the horizontal stabilizer trim actuator (HSTA) no-back and the number 1 motor brake assembly (MBA) can both fail dormant. This AD requires revising the airplane maintenance schedule to include new functional tests of the HSTA no-back and HSTA brake system. We are issuing this AD to prevent dormant failure of the HSTA no-back and the number 1 MBA, which along with additional component failure could result in an uncontrollable horizontal stabilizer surface runaway without the ability to retrim, and consequent loss of the airplane.

DATES: This AD becomes effective May 10, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 10, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on October 11, 2011 (76 FR 62669), and proposed to correct an unsafe condition for the specified products. The MCAI states:

> It was discovered that the Horizontal Stabilizer Trim Actuator (HSTA) No Back and the Number 1 Motor Brake Assembly (MBA) can both fail dormant. A failure of the HSTA No Back and the Brake System along with additional component failure could result in an uncontrollable horizontal stabilizer surface runaway without the ability to retrim. This condition, if not corrected, could lead to the loss of the aeroplane.
>
> As a result, new Airworthiness Limitation Tasks, consisting of a functional test of the HSTA No Back and a functional test of the HSTA Brake System, have been introduced to ensure that a dormant failure of either component is detected and corrected.
>
> This [TCCA] directive mandates the revision of the approved maintenance schedule to include these new tasks, including phase-in schedules.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the single comment received.

Request To Revise Number of U.S.-Registered Airplanes

The commenter, Matthew B. Mitchell, stated that the number of U.S.-registered Model BD–100–1A10 airplanes exceeds the 76 airplanes shown in the Costs of Compliance section of this AD, and should be 238 airplanes, to agree with Aircraft Geometric Height Measurement Element (AGHME) figures.

We agree to revise the number of U.S.-registered airplanes used to determine the cost estimate in this AD. We have confirmed with Bombardier, Inc., that 217 Model BD–100–1A10 airplanes are registered in the U.S. We have changed the figures in the ''Costs of Compliance'' section of this AD accordingly.

Additional Changes Made to This AD

We have redesignated Note 1 of the NPRM (76 FR 62669, October 11, 2011) as paragraph (c)(2) of this AD, paragraph (c) of the NPRM as paragraph (c)(1) of this AD, and Note 2 of the NPRM as Note 1 to paragraphs (g) and (h) of this AD. We have also relocated Note 1 of this AD to follow paragraph (g) of this AD.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD

with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 217 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $18,445, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 62669, October 11, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2012–06–03 Bombardier, Inc.: Amendment 39–16984. Docket No. FAA–2011–1064; Directorate Identifier 2011–NM–075–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 10, 2012.

(b) Affected ADs

None.

(c) Applicability

(1) This AD applies to all Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, certificated in any category.

(2) This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these tasks is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

(d) Subject

Air Transport Association (ATA) of America Code 55: Stabilizers.

(e) Reason

This AD was prompted by reports that the horizontal stabilizer trim actuator (HSTA) no-back and the number 1 motor brake assembly (MBA) can both fail dormant. We are issuing this AD to prevent dormant failure of the HSTA no-back and the number 1 MBA, which along with additional component failure could result in an uncontrollable horizontal stabilizer surface runaway without the ability to retrim, and consequent loss of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Add Task 27–40–00–107 to the Maintenance Program

Within 30 days after the effective date of this AD: Revise the maintenance program by incorporating Task 27–40–00–107, ''Functional Test of the Horizontal Stabilizer Trim Actuator (HSTA) No Back,'' in accordance with Bombardier Temporary Revision 5–2–59, dated November 25, 2010, to Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual. For this task, the initial compliance time starts at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD.

Note 1 to paragraphs (g) and (h) of this AD: The maintenance program revision required by paragraphs (g) and (h) of this AD may be done by inserting a copy of Bombardier Temporary Revision 5–2–59, dated November 25, 2010, into Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual. When this Temporary Revision has been included in the general revisions of Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual, the general revisions may be inserted in Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual, provided that the relevant information in the general revision is identical to that in Bombardier Temporary Revision 5–2–59, dated November 25, 2010, to Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual.

(1) For HSTAs with 2,600 or fewer total flight hours on the HSTA as of the effective date of this AD: Prior to the accumulation of 3,000 total flight hours on the HSTA.

(2) For HSTAs with more than 2,600 total flight hours on the HSTA as of the effective date of this AD: Within 400 flight hours or 6 months after the effective date of this AD, whichever occurs first.

(h) Add Task 27–41–05–105 to the Maintenance Program

Within 30 days after the effective date of this AD, whichever occurs later: Revise the maintenance program by incorporating Task 27–41–05–105, ''Functional Test of the Horizontal Stabilizer Trim Actuator (HSTA) Brake System,'' in accordance with

Bombardier Temporary Revision 5–2–59, dated November 25, 2010, to Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual. For this task, the initial compliance time starts at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For airplanes with 400 or fewer total flight hours as of the effective date of this AD: Prior to the accumulation of 800 total flight hours.

(2) For airplanes with more than 400 total flight hours as of the effective date of this AD: Within 400 flight hours or 12 months after the effective date of this AD, whichever occurs first.

(i) No Alternative Actions or Intervals

After accomplishing the revision required by paragraphs (g) and (h) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI Canadian Airworthiness Directive CF–2011–05, dated March 24, 2011; and Bombardier Temporary Revision 5–2–59, dated November 25, 2010, to Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual; for related information.

(l) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51:

(i) Bombardier Temporary Revision 5–2–59, dated November 25, 2010, to Section 5–10–40, of Part 2, of the Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks Manual.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 9, 2012.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–8041 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0723; Directorate Identifier 2010–NM–080–AD; Amendment 39–16978; AD 2012–05–06]

RIN 2120–AA64

Airworthiness Directives; Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all Lockheed Martin Corporation/Lockheed Martin Aeronautics Company Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 airplanes. That AD currently requires implementation of a Supplemental Inspection Document (SID) program of structural inspections to detect fatigue cracking, and repair if necessary, to ensure continued airworthiness of these airplanes as they approach the manufacturer's original fatigue design life goal. This new AD adds Model L–1011–385–3 airplanes to the applicability, changes certain inspection thresholds, adds three new structurally significant details (SSDs), and removes an SSD that has been addressed by a different AD. This AD was prompted by an evaluation by the manufacturer of usage and flight data that provided additional information about certain SSDs where fatigue damage is likely to occur. We are issuing this AD to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

DATES: This AD is effective May 10, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 10, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of November 2, 1995 (60 FR 51713, October 3, 1995).

ADDRESSES: For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, Airworthiness Office, Dept. 6A0M, Zone 0252, Column P–58, 86 S. Cobb Drive, Marietta, Georgia 30063; phone: 770–494–5444; fax 770–494–5445; email *ams.portal@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; phone: 404–474–5554; fax 404–474–5606; email: *Carl.W.Gray@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995). That AD applies to the specified products. The NPRM published in the **Federal Register** on August 8, 2011 (76 FR 48049). That NPRM proposed to continue to require implementation of a SID program of structural inspections to detect fatigue cracking, and repair if necessary. That NPRM also proposed to add Model L–1011–385–3 airplanes to the applicability, change certain inspection thresholds and intervals for Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 airplanes, include three additional SSDs for Model L–1011–385–3 airplanes, and remove an SSD that has been addressed by a different AD action.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal NPRM (76 FR 48049, August 8, 2011) and the FAA's response to each comment.

Request To Withdraw NPRM (76 FR 48049, August 8, 2011)

An anonymous commenter requested that we stop ''regulating job(s) out of this country'' and leave companies alone to run their business as they see fit.

We infer the commenter is requesting that we withdraw the NPRM (76 FR 48049, August 8, 2011). We disagree. This AD addresses an identified unsafe condition. If the structural inspections required by this AD are not done, an airplane could develop fatigue cracking that could compromise the structural integrity of the airplane. We have not revised this AD in this regard.

Request To Clarify Reference

Lockheed Martin requested that we clarify the section of the document referenced in paragraph (g)(5) of the NPRM (76 FR 48049, August 8, 2011) by replacing ''Appendix VI'' with ''Section VI., Appendix.'' The commenter noted that there is no Appendix VI in the document and that there is a section VI titled Appendix.

We agree, for the reason provided by the commenter. We have revised paragraph (g)(5) of this AD accordingly.

Clarification of Repair Service Information

We have added Note 1 following paragraph (n)(1) of this AD to clarify that guidance on doing repairs in accordance with a ''L–1011–385 Series Supplemental Inspection Document'' specified in paragraph (n)(1) of this AD can be found in the applicable service bulletins identified in certain SSDs of the ''L–1011–385 Series Supplemental Inspection Document.''

Explanation of Changes Made to This AD

We have revised certain headers throughout this AD. We have also revised the wording in paragraph (g) of this AD. These changes have not changed the intent of this AD.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the change described previously—and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 48049, August 8, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 48049, August 8, 2011).

We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD affects 26 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Number of airplanes affected	Cost for U.S. operators
Incorporate SID into maintenance program [retained actions from AD 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995)].	550 work-hours × $85 per hour = $46,750.	$0	$46,750	26	$1,215,500.
Initial inspections [retained actions from AD 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995)].	245 work-hours × $85 per hour = $20,825.	$0	$20,825	26	$541,450.
Repetitive inspections [retained actions from AD 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995)].	52 work-hours × $85 per hour = $4,420 per inspection cycle.	$0	$4,420 per inspection cycle.	26	$114,920 per inspection cycle.
Incorporate SID into maintenance program [new action for Model L–1011–385–3 airplanes].	1 work-hour × 85 = $85.	$0	$85	2	$170.
Initial inspections [new action for Model L–1011–385–3 airplanes].	48 work-hours × $85 per hour = $4,080.	$0	$4,080	2	$8,160.
Repetitive inspections [new action for Model L–1011–385–3 airplanes].	44 work-hours × $85 per hour = $3,740 per inspection cycle.	$0	$3,740 per inspection cycle.	2	$7,480 per inspection cycle.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII,

Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995), and adding the following new AD:

2012–05–06 Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company: Amendment 39–16978; Docket No. FAA–2011–0723; Directorate Identifier 2010–NM–080–AD.

(a) Effective Date

This airworthiness directive (AD) is effective May 10, 2012.

(b) Affected ADs

This AD supersedes AD 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995).

(c) Applicability

All Lockheed Martin Corporation/ Lockheed Martin Aeronautics Company Model L–1011–385–1, L–1011–385–1–14, L–1011–385–1–15, and L–1011–385–3 airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by an evaluation by the manufacturer of usage and flight data that provided additional information about certain structurally significant details (SSDs) where fatigue damage is likely to occur. We are issuing this AD to prevent fatigue cracking that could compromise the structural integrity of these airplanes.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Maintenance Program Revision

This maintenance program revision is retained from AD 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995): For Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 airplanes: Within 12 months after November 2, 1995 (the effective date of AD 95–20–04 R1, Amendment 39–9454 (60 FR 63414, December 11, 1995)), incorporate a revision into the maintenance inspection program which provides for inspection(s) of the structurally significant details (SSD) defined in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994. Doing the revision required by paragraph (h) of this AD terminates the requirement to revise the maintenance inspections program specified in this paragraph. Doing the inspections required by paragraph (i) of this AD terminates the corresponding inspection requirements of this paragraph.

(1) The initial inspection for each SSD must be performed at the later of the times specified in paragraph (g)(1)(i) or (g)(1)(ii) of this AD.

(i) Within one repeat interval measured from November 2, 1996 (12 months after November 2, 1995).

(ii) Prior to the threshold specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, for that SSD.

(2) A 10 percent deviation from the repetitive interval specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, for that SSD is acceptable to allow for planning and scheduling time.

(3) If Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, specifies that inspection of any SSD be performed at every ''C'' check, those inspections must be performed at intervals not to exceed 5,000 hours time-in-service or 2,500 flight cycles, whichever occurs earlier.

(4) If Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, specifies either the initial inspection or the repetitive inspection intervals for any SSD in terms of flight hours or flight cycles, the inspection shall be performed prior to the earlier of the terms (whichever occurs first on the airplane: either accumulated number of flight hours, or accumulated number of flight cycles).

(5) The non-destructive inspection techniques referenced in Section VI., ''Appendix,'' of Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, provide acceptable methods for accomplishing the inspections required by paragraph (g) of this AD.

(h) New Requirements of This AD: Maintenance Program Revision

For all airplanes: Within 12 months after the effective date of this AD, incorporate a revision into the maintenance inspection program which provides for inspection(s) of the SSDs defined in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009. Doing this revision terminates the requirement to revise the maintenance inspection program as specified in paragraph (g) of this AD.

(i) New Requirement of This AD: Threshold and Intervals

For all airplanes: Do all applicable inspections specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009. Do the initial inspection or next repetitive inspection at the applicable time specified in paragraphs (i)(1) and (i)(2) of this AD, except as provided by paragraphs (j), (k), and (l) of this AD. Repeat the inspections thereafter in accordance with the intervals and actions specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009, except as provided by paragraphs (j), (k), and (l) of this AD. The non-destructive inspection techniques referenced in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009, provide acceptable methods for accomplishing the inspections required by this AD. Doing the inspections required by this paragraph of this AD terminates the corresponding inspection requirements of paragraph (g) of this AD.

(1) For Model L–1011–385–3 airplanes; and for Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 airplanes on which the initial inspection required by paragraph (g) of this AD has not been

accomplished before the effective date of this AD: Do the initial inspection at the later of the times specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Within one repeat interval measured from a date 12 months after the effective date of this AD.

(ii) Before the threshold specified for that SSD in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009.

(2) For Model L–1011–385–1, L–1011–385–1–14, and L–1011–385–1–15 airplanes on which the initial inspection required by paragraph (g) of this AD has been accomplished before the effective date of this AD: Do the next repetitive inspection at the earlier of the times specified in paragraphs (i)(2)(i) and (i)(2)(ii) of this AD.

(i) Within the next repetitive inspection interval specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994, for that SSD.

(ii) Within one repeat interval measured from a date 12 months after the effective date of this AD; or within the next repetitive interval specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009, for that SSD; whichever occurs later.

(j) Exception to Intervals—10 Percent Deviation Allowed

For all airplanes: A 10 percent deviation from the repetitive interval specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009, for that SSD is acceptable to allow for planning and scheduling time.

(k) Exception to Intervals Specifying ''C'' Check

For all airplanes: Where Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009, specifies that inspection of any SSD be performed at every ''C'' check, those inspections must be performed at intervals not to exceed 5,000 flight hours or 2,500 flight cycles, whichever occurs earlier.

(l) Exceptions to Threshold and Intervals

For all airplanes: Where Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009, specifies either the initial inspection or the repetitive inspection intervals for any SSD in terms of flight hours or flight cycles, the inspection must be performed prior to the earlier of the terms (whichever occurs first on the airplane: either accumulated number of flight hours, or accumulated number of flight cycles).

(m) Exception to Inspection Procedure

For all airplanes: There should be no repair or modification work done in the inspection area before the initial inspections required by paragraph (i) of this AD; any changes in the inspection area could affect the inspection procedure.

(n) New Requirements of This AD: Repair

For all airplanes: If any cracking is found in any SSD during any inspection required by this AD, prior to further flight, repair in accordance with paragraph (n)(1), (n)(2), or (n)(3) of this AD:

(1) In accordance with the Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994; or revised April 2009. After doing the revision required by paragraph (h) of this AD, repair in accordance with Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009.

Note 1 to paragraph (n)(1) of this AD: Guidance on doing repairs in accordance with a ''L–1011–385 Series Supplemental Inspection Document'' specified in paragraph (n)(1) of this AD can be found in the applicable service bulletins identified in certain SSDs of the ''L–1011–385 Series Supplemental Inspection Document'' specified in paragraph (n)(1) of this AD.

(2) In accordance with Lockheed L–1011 Structural Repair Manual, Revision 80, dated December 15, 2009.

(3) In accordance with a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA.

(o) New Requirements of This AD: Reporting

For all airplanes: At the later of the times specified in paragraphs (o)(1) and (o)(2) of this AD, submit a report of the results (positive or negative) of the inspection(s) to Lockheed in accordance with Section V., Data Reporting System (DRS), of the applicable Lockheed Document specified in paragraph (o)(1) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.),* the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) Within 30 days after returning the airplane to service, subsequent to accomplishment of the inspection(s) specified in Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994; or Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009.

(2) Within 30 days after the effective date of this AD.

(p) Paperwork Reduction Act Burden Statement

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(q) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(r) Related Information

For more information about this AD, contact Carl Gray, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta ACO, 1701 Columbia Avenue, College Park, Georgia 30337; phone: 404–474–5554; fax: 404–474–5606; email: *Carl.W.Gray@faa.gov.*

(s) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on the date specified.

(2) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on May 10, 2012.

(i) Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised April 2009.

(ii) Lockheed L–1011 Structural Repair Manual, Revision 80, dated December 15, 2009, which contains the following errors:

(A) Page 13/14 of Section 51–10–06, pages 1 through 10 of the Table of Contents for Chapter 54, and page 809/810 of Section 55–35–00 show a page date of ''Date 15XX;'' these pages should be dated December 15, 2009.

(B) The List of Effective Pages for Chapter 51 identifies incorrect dates for pages 3 and 4 of the Table of Contents for Chapter 51; the correct date of those pages is March 15, 1999.

(C) Page 7 of the List of Effective Pages for Chapter 53 does not list a configuration number for page 20 of Section 53–21–00; that page should be identified as configuration 2.

(D) The List of Effective Pages for Chapter 53 identifies incorrect dates for pages 3 and 5 of Section 53–14–00 (Configuration 2); the correct dates are September 15, 1995, for page 3, and March 15, 1994, for page 5.

(E) The List of Effective Pages for Chapter 53 identifies an incorrect date for page 4 of Section 53–15–00; the correct date for that page is September 15, 1981.

(F) The List of Effective Pages for Chapter 54 identifies an incorrect date for page 1 of Section 54–23–00; the correct date for that page is May 15, 1986.

(G) The List of Effective Pages for Chapter 54 identifies an incorrect date for page 4 of Section 54–32–00; the correct date for that page is March 15, 1992.

(H) The List of Effective Pages for Chapter 57 identifies an incorrect date for page 13 of Section 57–00–00; the correct date for that page is April 15, 2005.

(I) The List of Effective Pages for Chapter 57 identifies an incorrect date for pages 16 and 18 of Section 57–12–00; the correct date for those pages is March 15, 1983.

(J) The List of Effective Pages for Chapter 57 identifies an incorrect date for pages 801, 802, and 805/806 of Section 57–13–00; the correct date for those pages is December 15, 2009.

(K) The List of Effective Pages for Chapter 57 identifies an incorrect date for pages 810 through 819 of Section 57–51–00; the correct date for those pages is December 15, 2009.

(L) The List of Effective Pages for Chapter 57 identifies an incorrect date for page 4 of Section 57–52–00; the correct date for that page is December 15, 2009.

(M) Page 25, dated March 15, 1983, and page 26, dated May 15, 1986, of Section 57–12–00 were inadvertently omitted from the List of Effective Pages for Chapter 57.

(4) The following service information was approved for IBR November 2, 1995 (60 FR 51713, October 3, 1995).

(i) Lockheed Document Number LG92ER0060, ''L–1011–385 Series Supplemental Inspection Document,'' revised January 1994.

(5) For service information identified in this AD, contact Lockheed Martin Corporation/Lockheed Martin Aeronautics Company, L1011 Technical Support Center, Dept. 6A4M, Zone 0579, 86 South Cobb Drive, Marietta, Georgia 30063–0579; telephone 770–494–5444; fax 770–494–5445; email *L1011.support@lmco.com;* Internet *http://www.lockheedmartin.com/ams/tools/TechPubs.html.*

(6) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(7) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, WA, on March 1, 2012.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–8040 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1318; Directorate Identifier 2010–NM–274–AD; Amendment 39–17009; AD 2012–07–03]

RIN 2120–AA64

Airworthiness Directives; 328 Support Services GmbH Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for all 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes. That AD currently requires performing a detailed visual inspection of the cockpit door locking device and the surrounding area for proper installation, and corrective action if necessary. This new AD requires removing or replacing the locking device of the cockpit door; performing operational tests, and repair if necessary; and, for certain airplanes, installing gap filler parts. This AD was prompted by a report that a right-hand power lever jammed in flight-idle position during the landing roll-out, and the airplane was stopped by excessive braking. We are issuing this AD to detect and correct interference with the engine and flight control cables, which could result in reduced controllability of the airplane.

DATES: This AD becomes effective May 10, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 10, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of November 20, 2009 (74 FR 53151, October 16, 2009).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 12, 2011 (76 FR 77159), and proposed to supersede AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> An incident has been reported with a Dornier 328–100 aeroplane, where the right-hand (RH) power lever jammed in flight-idle position during the landing roll-out. The aeroplane was stopped by excessive braking.
>
> The reason for the jamming was that the cockpit door locking device Part Number (P/N) 001A252A3914012 had fallen off the RH cockpit wall, blocking the RH power/condition lever pulley/cable cluster below the door. Although the affected aeroplane had been modified, the technical investigation showed that a loose Cockpit Door Locking device could also occur on 328–100 and 328–300 aeroplanes with a standard installation.
>
> This condition, if not corrected, could cause interference with the engine and/or flight control cables, possibly resulting in reduced control of the aeroplane.
>
> To address that unsafe condition, EASA issued AD 2009–0082 [which corresponds to FAA AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009)] as an interim solution, to require a one-time inspection of the cockpit door locking device and the surrounding area and the reporting of all findings to the TC [type certificate] holder.
>
> Since that AD was issued, the TC holder has developed an improved cockpit door locking device, P/N 001A252A3914016. Consequently, this [EASA] AD retains the requirements of [EASA] AD 2009–0082, which is superseded, and requires the replacement of the current P/N 001A252A3914012 with new designed P/N 001A252A3914016 cockpit door locking device, or the removal of the cockpit door locking device P/N 001A252A3914012 and the installation of a gap filler, as applicable to aeroplane configuration.

The required actions include performing operational tests, and repair if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 77159, December 12, 2011) or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

• Are consistent with the intent that was proposed in the NPRM (76 FR 77159, December 12, 2011) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (76 FR 77159, December 12, 2011).

Costs of Compliance

We estimate that this AD will affect 59 products of U.S. registry.

The actions that are required by AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009), and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 6 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,315 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $166,675, or $2,825 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 77159, December 12, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009), and adding the following new AD:

2012–07–03 328 Support Services GmbH (Type Certificate Previously Held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH): Amendment 39–17009. Docket No. FAA–2011–1318; Directorate Identifier 2010–NM–274–AD.

(a) Effective Date

This airworthiness directive (AD) becomes effective May 10, 2012.

(b) Affected ADs

This AD supersedes AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009).

(c) Applicability

This AD applies to 328 Support Services GmbH (Type Certificate previously held by AvCraft Aerospace GmbH; Fairchild Dornier GmbH; Dornier Luftfahrt GmbH) Model 328–100 and –300 airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Reason

This AD was prompted by a report that a right-hand power lever jammed in flight-idle position during the landing roll-out, and the airplane was stopped by excessive braking. We are issuing this AD detect and correct interference with the engine and flight control cables, which could result in reduced controllability of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Restatement of Certain Requirements of AD 2009–21–06, Amendment 39–16043

(74 FR 53151, October 16, 2009): Inspection

Within 3 months after November 20, 2009 (the effective date of AD 2009–21–06, Amendment 39–16043 (74 FR 53151, October 16, 2009)), do a detailed visual inspection of the cockpit door locking device and the surrounding area for proper installation, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–485 or SB–328J–25–235, both dated January 28, 2009, as applicable.

(h) Corrective Action

If any discrepancy is found during the inspection specified in paragraph (g) of this AD, before further flight, do the corrective action, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–485 or SB–328J–25–235, both dated January 28, 2009, as applicable.

(i) New Requirements of This AD: Install, Replace, and Test

Within 4,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, do the applicable actions specified in paragraph (i)(1) or (i)(2) of this AD.

(1) For airplanes on which a door locking device with Option 521K010 is installed: Remove the locking device of the cockpit door, part number (P/N) 001A252A3914012, install the gap filler parts, and do operational tests, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–492, dated March 18, 2010 (for Model 328–100 airplanes); or 328 Support Services Service Bulletin SB–328J–25–244, dated March 18, 2010 (for Model 328–300 airplanes).

(2) For airplanes on which a door locking device with Option 521K010 is not installed: Replace the locking device of the cockpit door, P/N 001A252A3914012, with a new locking device, P/N 001A252A3914016, and do operational tests, in accordance with the Accomplishment Instructions of 328 Support Services Service Bulletin SB–328–25–491, dated March 18, 2010 (for Model 328–100 airplanes); or 328 Support Services Service Bulletin SB–328J–25–243, dated March 18, 2010 (for Model 328–300 airplanes).

(j) Repair

If any operational test fails during the actions specified in paragraph (i)(1) or (i)(2) of this AD: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (or its delegated agent).

(k) Parts Installation

As the effective date of this AD, no person may install a locking device of the cockpit door having P/N 001A252A3914012 on any airplane.

(l) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(m) Related Information

Refer to MCAI EASA Airworthiness Directive 2010–0169, dated August 13, 2010, and the service bulletins specified in paragraphs (m)(1) through (m)(6) of this AD, for related information.

(1) 328 Support Services Service Bulletin SB–328–25–485, dated January 28, 2009.

(2) 328 Support Services Service Bulletin SB–328J–25–235, dated January 28, 2009.

(3) 328 Support Services Service Bulletin SB–328–25–491, dated March 18, 2010.

(4) 328 Support Services Service Bulletin SB–328J–25–243, dated March 18, 2010.

(5) 328 Support Services Service Bulletin SB–328–25–492, dated March 18, 2010.

(6) 328 Support Services Service Bulletin SB–328J–25–244, dated March 18, 2010.

(n) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) of the following service information under 5 U.S.C. 552(a) and 1 CFR part 51 on the date specified:

(i) 328 Support Services Service Bulletin SB–328–25–485, dated January 28, 2009, approved for IBR November 20, 2009 (74 FR 53151, October 16, 2009). Only the odd-numbered pages of this document contain the issue date of the document.

(ii) 328 Support Services Service Bulletin SB–328J–25–235, dated January 28, 2009, approved for IBR November 20, 2009 (74 FR 53151, October 16, 2009). Only the odd-numbered pages of this document contain the issue date of the document.

(iii) 328 Support Services Service Bulletin SB–328–25–491, dated March 18, 2010, approved for IBR May 10, 2012. Only the odd-numbered pages of this document contain the issue date of the document.

(iv) 328 Support Services Service Bulletin SB–328–25–492, dated March 18, 2010, approved for IBR May 10, 2012. Only the odd-numbered pages of this document contain the issue date of the document.

(v) 328 Support Services Service Bulletin SB–328J–25–243, dated March 18, 2010, approved for IBR May 10, 2012. Only the odd-numbered pages of this document contain the issue date of the document.

(vi) 328 Support Services Service Bulletin SB–328J–25–244, dated March 18, 2010, approved for IBR May 10, 2012. Only the odd-numbered pages of this document contain the issue date of the document.

(2) For service information identified in this AD, contact 328 Support Services GmbH, Global Support Center, P.O. Box 1252, D–82231 Wessling, Federal Republic of Germany; telephone +49 8153 88111 6666; fax +49 8153 88111 6565; email *gsc.op@328support.de;* Internet *http://www.328support.de.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 23, 2012.

Ali Bahrami

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–7850 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–1386; Airspace Docket No. 11–ANE–11]

RIN 2120–AA66

Modification, Revocation and Establishment of Air Traffic Service Routes; Windsor Locks Area; CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies four VOR Federal airways, revokes one VOR Federal airway, and establishes three area navigation (RNAV) routes in the vicinity of Windsor Locks, CT. The FAA is taking this action to adjust the airway route structure due to the planned decommissioning of the Bradley VHF omnirange/tactical air navigation (VORTAC) aid located on Bradley International Airport, Windsor Locks, CT. This action also adjusts the termination point of V–203 due to Canadian airspace reconfiguration.

DATES: Effective date 0901 UTC, May 31, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace, Regulations and ATC Procedures Group, Office of Airspace Services, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On January 24, 2012, the FAA published in the **Federal Register** a notice of proposed rulemaking to modify certain VOR Federal airways

and establish RNAV routes in the vicinity of Windsor Locks, CT, due to the planned decommissioning of the Bradley VORTAC (77 FR 3415).

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. One comment was received from the Aircraft Owners and Pilots Association which expressed support for the proposal.

Differences From NPRM

Since publication of the NPRM, Canada put into effect a reconfiguration of airway structure that affects the segment of V–203 that lies within Canadian airspace. Currently, that segment extends between the Massena, NY, 047° radial and the Montreal, Canada, 188° radial, to Montreal. Due to the reconfiguration, V–203 no longer terminates at Montreal. The new termination point is the FRANX fix, which is defined by the intersection of the Massena, NY, 047° and the St Jean, Canada 270° radials. This change lies entirely within Canadian airspace.

A number of points were removed from the descriptions of T–212, T–255 and T–300 because the points are not needed to form the alignment of the routes.

The Rule

This action amends Title 14 Code of Federal Regulation (14 CFR) part 71 by modifying VOR Federal airways V–130, V–203, V–405 and V–419; revoking V–205; and establishes RNAV routes T–212, T–255, and T–300. These changes are required due to the planned decommissioning of the Bradley VORTAC in 2012.

V–130, currently extending from the Albany, NY, VORTAC, through the Bradley VORTAC, to the Martha's Vineyard, MA, VOR/DME, this action is modified by eliminating the segment that extends from the Albany, NY, VORTAC, to the Bradley VORTAC, to the Norwich, CT, VOR/DME. The modified V–130 originates at the Norwich VOR/DME and follows the existing route to the Martha's Vineyard, MA, VOR/DME.

V–203 is extended to encompass a part of V–130 that is being removed as described above. V–203 currently begins at the Albany, NY, VORTAC and ends at the Montreal, Canada, VOR/DME. The extended segment of V–203 runs southeast from the Albany VORTAC to the existing STELA intersection (formed by the intersection of the Albany 134° and the Chester, MA, VOR/DME 266° radials). At that point, flights may link with other VOR Federal airways. In addition, the termination point of V–203 is modified to match the Canadian airway changes (noted above), and now terminates at the FRANX fix, located in Canadian airspace, instead of the Montreal VOR/DME.

V–205 is removed in its entirety because other existing airways are available that provide for navigation to and from Putnam (V–205 currently extends from the COATE intersection 8 NM northwest of the Sparta, NJ, VORTAC to the Putnam, CT, VOR/DME.) In addition, a new RNAV route (T–212) overlies part of the V–205 route and terminates at Putnam.

V–405 is realigned to bypass the Bradley VORTAC and is routed through the Barnes, MA, VORTAC (located approximately 13 NM north of Bradley). The airway then proceeds through the Putnam, CT, VOR/DME to the Providence, RI, VORTAC and resumes the currently published route to Martha's Vineyard, MA.

V–419, currently extending between the Westminster, MD, VORTAC, and the Boston, MA, VOR/DME, now extends between Westminster, MD and the existing BRISS intersection (formed by the intersection of the Carmel, NY, VOR/DME 045° and the Madison, CT, 328° radials). The route segments between the BRISS intersection and Boston are eliminated. Alternative routing to Boston is available using other existing airways and/or via the new RNAV routes.

The FAA is also establishing three new RNAV routes, designated T–212, T–255 and T–300. T–212 extends between the WEARD, NY, fix and the Putnam, CT, VOR/DME. T–212 overlies V–205, which is removed.

T–255 extends between the NELIE, CT, waypoint (WP) and the Martha's Vineyard, MA, VOR/DME. It overlies that portion of V–405 that is being removed as described above.

T–300 extends between the Albany, NY, VORTAC and the Martha's Vineyard, MA, VOR/DME. This route overlies another portion of V–130 that is removed under this action.

VOR Federal airways are published in paragraph 6010, and RNAV routes are published in paragraph 6011, respectively, of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways and RNAV routes listed in this document will be subsequently published in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation because the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority because it amends the airway structure to ensure the continuity of air navigation capability in the Windsor Locks, CT, area and expands the availability of RNAV routes within the NAS.

Radials listed in this rule are expressed in degrees relative to True North.

Environmental Review

The FAA has determined that this action is categorically excluded from further environmental documentation according to FAA Order 1050.1E, paragraph 311a, 311b, and 311i. The implementation of this action will not result in any extraordinary circumstances in accordance with paragraph 304 of Order 1050.1E.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011 and effective September 15, 2011, is amended as follows:

Paragraph 6010 VOR federal airways.

* * * * *

V–130 [Amended]

From Norwich, CT; INT Norwich 114° and Martha's Vineyard, MA 267° radials; to Martha's Vineyard.

V–203 [Amended]

From INT Chester, MA 266° and Albany, NY 134° radials; Albany; Saranac Lake, NY; Massena, NY; to INT Massena 047° and St. Jean, Canada 270° radials. The airspace within Canada is excluded.

V–205 [Removed]

V–405 [Amended]

From INT Pottstown, PA, 222° and Baltimore, MD, 034° radials; Pottstown; INT Pottstown 050° and Solberg, NJ, 264° radials; Solberg; INT Solberg 044° and Carmel, NY, 243° radials; Carmel; INT Carmel 344° and Pawling, NY, 204° radials; Pawling; Barnes, MA; Putnam, CT; Providence, RI; INT Providence 151° and Martha's Vineyard, MA, 267° radials; to Martha's Vineyard.

V–419 [Amended]

From Westminster, MD to Modena, PA; Solberg, NJ; INT Solberg 044° and Carmel, NY 243° radials; Carmel; to INT Carmel 045°and Madison, CT 328° radials.

* * * * *

Paragraph 6011 United States area navigation routes.

* * * * *

T–212 WEARD, NY to Putnam, CT (PUT) [New]

WEARD, NY	Fix	(lat. 41°45′44″ N., long. 74°31′30″ W.)
WEETS, NY	Fix	(lat. 41°51′27″ N., long. 74°11′52″ W.)
NELIE, CT	INT	(lat. 41°56′28″ N., long. 72°41′19″ W.)
Putnam, CT (PUT)	VOR/DME	(lat. 41°57′20″ N., long. 71°50′39″ W.)

T–255 NELIE, CT to Martha's Vineyard, MA (MVY) [New]

NELIE, CT	INT	(lat. 41°56′28″ N., long. 72°41′19″ W.)
Providence, RI (PVD)	VORTAC	(lat. 41°43′28″ N., long. 71°25′47″ W.)
FALMA, RI	Fix	(lat. 41°22′22″ N., long. 71°10′16″ W.)
Martha's Vineyard, MA (MVY)	VOR/DME	(lat. 41°23′46″ N., long. 70°36′46″ W.)

T–300 Albany, NY (ALB) to Martha's Vineyard, MA (MVY) [New]

Albany, NY (ALB)	VORTAC	(lat. 42°44′50″ N., long. 73°48′11″ W.)
NELIE, CT	INT	(lat. 41°56′28″ N., long. 72°41′19″ W.)
Norwich, CT (ORW)	VOR/DME	(lat. 41°33′23″ N., long. 72°59′58″ W.)
MINNK, RI	Fix	(lat. 41°21′41″ N., long. 71°25′27″ W.)
FALMA, RI	Fix	(lat. 41°22′22″ N., long. 71°10′16″ W.)
Martha's Vineyard, MA (MVY)	VOR/DME	(lat. 41°23′46″ N., long. 70°36′46″ W.)

Issued in Washington, DC, on March 28, 2012.

Gary A. Norek,

Manager, Airspace Regulations and ATC Procedures Group.

[FR Doc. 2012–8183 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 117 and 121

[Docket No. FAA–2012–0358]

Notice of Procedures for Submitting Clarifying Questions Concerning the Flight, Duty, and Rest Requirements of Part 117

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of procedures for submitting clarifying questions.

SUMMARY: The FAA published a final rule on January 4, 2012 that amends the existing flight, duty and rest regulations applicable to certificate holders and their flightcrew members. Since then, the FAA has received questions from stakeholders concerning the provisions of the final rule. In response to these questions, the FAA is issuing this document, which announces the procedures for submitting clarifying questions to the final rule.

DATES: You must submit your clarifying questions in writing using the procedures outlined below by June 4, 2012.

ADDRESSES: See the ''Procedures for Submitting Clarifying Questions'' section of this document.

FOR FURTHER INFORMATION CONTACT: See the ''Procedures for Submitting Clarifying Questions'' section of this document.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2012, the FAA published a final rule entitled, ''Flightcrew Member Duty and Rest Requirements'' (77 FR 330). In that rule, the FAA created new part 117, which replaces the existing flight, duty, and rest regulations, contained in Subparts Q, R, and S, for part 121 passenger operations. As part of this rulemaking, the FAA also applied the new part 117 to certain part 91 operations, and permitted all-cargo operations operating under part 121 to voluntarily opt into the part 117 flight, duty, and rest regulations.

Since the rule was published, the FAA has received numerous questions concerning the provisions of the final rule. Even though the final rule's compliance date is January 4, 2014, the FAA concludes that responding to the questions and providing additional regulatory clarity will enable the stakeholders to better plan the changes that they will need to make in order to comply with the final rule. To the extent possible, the FAA also seeks to ensure consistency of interpretation by answering the stakeholders' questions in a single document instead of multiple different interpretations.

Accordingly, the FAA requests that all clarifying questions be submitted to the docket no later than June 4, 2012. The FAA emphasizes that it is not reconsidering the provisions of the final rule or reopening the final rule to notice and comment. Rather, the FAA is simply soliciting questions about how the final rule works so that the FAA can

provide greater clarity to the stakeholders by answering those questions.

Procedures for Submitting Clarifying Questions

If you wish to submit a request to the FAA for clarification of the Flightcrew Member Duty and Rest Requirements final rule, you must send your request using the below method by June 4, 2012.

1. Post your request on the Federal eRulemaking Portal. To access this electronic docket, go to *http://www.regulations.gov,* enter Docket Number FAA–2012–0358, and follow the online instructions for sending your request electronically.

2. In addition to sending your request to the electronic docket, send a copy via email to the subject matter expert as noted below.

Technical Questions: Dale E. Roberts, Air Transportation Division, Flight Standards Service, Federal Aviation Administration; email *dale.e.roberts@faa.gov.*

Legal Questions: Alex Zektser, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration; email *alex.zektser@faa.gov.*

The FAA will attempt to reply to the clarifying questions that are submitted by June 4, 2012.

Issued in Washington, DC, on March 26, 2012.

Rebecca B. MacPherson,

Assistant Chief Counsel for Regulations, AGC–200.

[FR Doc. 2012–7739 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 400, 401, 404, 405, 406, 413, 414, 415, 417, 420, 431, 433, 435, 437, 440, 460

49 CFR Part 1

[Docket No. FAA–2012–0232; Amendment Nos. 400–3, 401–7, 404–5, 405–5, 406–7, 413–10, 414–2, 415–5, 417–3, 420–5, 431–3, 433–2, 435–2, 437–1, 440–3, 460–1; 1–114; related to Docket Nos. 28851, 43810, FAA–1999–5535, FAA–1999–5833, FAA–1999–5835, FAA–2000–7953, FAA–2001–8607, FAA–2005–21332, FAA–2005–23449, FAA–2006–24197, FAA–2007–27390; OST Docket No. 1]

[RINs 2120–AF99, 2120–AG71, 2120–AG15, 2120–AG72, 2120–AG37, 2120–AH18, 2120–AI50, 2120–AI57, 2120–AI56, 2120–AI88]

Correction of Authority Citations for Commercial Space Transportation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Technical amendment.

SUMMARY: In 2010, Congress transferred the statute authorizing the FAA's commercial space transportation regulations. This action is necessary to correct affected citations in the Code of Federal Regulations to reflect this transfer of authority. The intended effect of this action is to make the affected regulations comply with the statute.

DATES: These amendments become effective April 5, 2012.

FOR FURTHER INFORMATION CONTACT: Laura Montgomery, Senior Attorney for Commercial Space Transportation, Office of the Chief Counsel, Regulations Division, AGC–200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971; email *laura.montgomery@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Since 1994, the FAA has operated in the area of commercial space launch activities under the authority delegated by Congress in 49 U.S.C. chapter 701. *See* Revision of Title 49, United States Code Annotated, ''Transportation,'' Public Law 103–272, 108 Stat. 745, 1130 (1994). The FAA implements these regulations through Title 14, Code of Federal Regulations (14 CFR) chapter III, Commercial Space Transportation.

In 2010, Congress consolidated commercial space laws into a single, unified title of the United States Code. *See* Enactment of Title 51—National and Commercial Space Programs, Public Law 111–314, 124 Stat. 3328 (2010). Congress' purpose was ''to codify certain existing laws related to national and commercial space programs as a positive law title of the United States Code.'' *Id.* During this process, 49 U.S.C. chapter 701 was transferred and redesignated as 51 U.S.C. chapter 509. The recodification makes no substantive changes.

The congressional transfer of authority made a number of citations in the Code of Federal Regulations obsolete. *See* 14 CFR chapter III (2011); 49 CFR 1.47 (2010). This amendment corrects the affected citations to accurately reference the new citations. This amendment does not make substantive changes to the affected regulations.

List of Subjects

14 CFR Part 400

Space transportation and exploration.

14 CFR Part 401

Organization and functions (Government agencies), Space safety, Space transportation and exploration.

14 CFR Part 404

Administrative practice and procedure, Space safety, Space transportation and exploration.

14 CFR Part 405

Investigations, Penalties, Space safety, Space transportation and exploration.

14 CFR Part 406

Administrative practice and procedure, Space safety, Space transportation and exploration.

14 CFR Part 413

Confidential business information, Human space flight, Reporting and recordkeeping requirements, Space safety, Space transportation and exploration.

14 CFR Part 414

Airspace, Aviation safety, Space transportation and exploration.

14 CFR Part 415

Aviation safety, Environmental protection, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 417

Aviation safety, Reporting and recordkeeping requirements, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 420

Airspace, Human space flight, Space safety, Space transportation and exploration.

14 CFR Part 431

Aviation safety, Environmental protection, Human space flight, Reporting and recordkeeping, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 433

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space transportation and exploration.

14 CFR Part 435

Aviation safety, Environmental protection, Investigations, Reporting and recordkeeping requirements, Space safety, Space transportation and exploration.

14 CFR Part 437

Aviation safety, Airspace, Human space flight, Rockets, Space safety, Space transportation and exploration.

14 CFR Part 440

Armed forces, Claims, Federal building and facilities, Government property, Indemnity payments, Insurance, Reporting and recordkeeping requirements, Rockets, Space transportation and exploration.

14 CFR Part 460

Human space flight, Reporting and recordkeeping requirements, Rockets, Space safety, Space transportation and exploration.

49 CFR Part 1

Authority delegations (Government agencies), Organizations and functions (Government agencies).

The Amendments

In consideration of the foregoing, the Federal Aviation Administration amends chapter III of title 14, Code of Federal Regulations, and subtitle A of title 49, Code of Federal Regulations, as follows:

Title 14—Aeronautics and Space

CHAPTER III—COMMERCIAL SPACE TRANSPORTATION, FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 400—BASIS AND SCOPE

■ 1. The authority citation for part 400 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 2. Revise § 400.2 to read as follows:

§ 400.2 Scope.

The regulations in this part set forth the procedures and requirements applicable to the authorization and supervision under 51 U.S.C. Subtitle V, chapter 509, of commercial space transportation activities conducted in the United States or by a U.S. citizen. The regulations in this chapter do not apply to amateur rockets activities, as defined in 14 CFR 1.1, or to space activities carried out by the United States Government on behalf of the United States Government.

PART 401—ORGANIZATION AND DEFINITIONS

■ 3. The authority citation for part 401 is revised to read as follows:

Authority: 51 U.S.C. 50101–50923.

■ 4. Revise the definitions of ''act'' and ''operator'' in § 401.5 to read as follows:

§ 401.5 Definitions.

* * * * *

Act means 51 U.S.C Subtitle V, Programs Targeting Commercial Opportunities, chapter 509—Commercial Space Launch Activities, 51 U.S.C. 50901–50923.

* * * * *

Operator means a holder of a license or permit under 51 U.S.C. Subtitle V, chapter 509.

* * * * *

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

■ 5. The authority citation for part 404 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 6. Revise § 404.1 to read as follows:

§ 404.1 Scope.

This part establishes procedures for issuing regulations to implement 51 U.S.C. Subtitle V, chapter 509, and for eliminating or waiving requirements for licensing or permitting of commercial space transportation activities under that statute.

PART 405—INVESTIGATIONS AND ENFORCEMENT

■ 7. The authority citation for part 405 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

PART 406—INVESTIGATIONS, ENFORCEMENT, AND ADMINISTRATIVE REVIEW

■ 8. The authority citation for part 406 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 9. Revise § 406.1(a) introductory text to read as follows:

§ 406.1 Hearings in license, permit, and payload actions.

(a) Pursuant to 51 U.S.C. 50912, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with 5 U.S.C. 554.

* * * * *

■ 10. Revise § 406.9(a) to read as follows:

§ 406.9 Civil penalties.

(a) *Civil penalty liability.* Under 51 U.S.C. 50917(c), a person found by the FAA to have violated a requirement of the Act, a regulation issued under the Act, or any term or condition of a license or permit issued or transferred under the Act, is liable to the United States for a civil penalty of not more than $110,000 for each violation, as adjusted for inflation. A separate violation occurs for each day the violation continues.

* * * * *

■ 11. Revise § 406.117(b), (c)(2), and (c)(3) to read as follows:

§ 406.117 Confidential information.

* * * * *

(b) *Marked information not made public.* If a party files a document in a sealed envelope clearly marked ''CONFIDENTIAL'' the document may not be made available to the public unless and until the administrative law judge or the FAA decisionmaker decides it may be made available to the public in accordance with 51 U.S.C. 50916.

(c) * * *

(2) If the party claims that the information is protected under 51 U.S.C. 50916, and if both the complainant and the respondent agree that the information is protected under that section, the administrative law judge must grant the motion. If one party does not agree that the information is protected under 51 U.S.C. 50916 the administrative law judge must decide. Either party may file an interlocutory appeal of right under § 406.173(c).

(3) If the party claims that the information should be protected on grounds other than those provided by 51 U.S.C. 50916 the administrative law judge must grant the motion if, based on the motion and any response to the motion, the administrative law judge determines that disclosure would be detrimental to safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

* * * * *

■ 12. Revise § 406.159(c) to read as follows:

§ 406.159 Subpoenas.

* * * * *

(c) *Enforcement of subpoena.* Upon a showing that a person has failed or refused to comply with a subpoena, the Secretary may apply to the appropriate district court of the United States to seek enforcement of the subpoena in accordance with 51 U.S.C. 50917(c). A party may request the Secretary to seek such enforcement.

■ 13. Revise § 406.173(c)(3) to read as follows:

§ 406.173 Interlocutory appeals.

* * * * *

(c) * * *

(3) Failure of the administrative law judge to grant a motion for a confidentiality order based on 51 U.S.C. 50916, under § 406.117(c)(2).

* * * * *

PART 413—LICENSE APPLICATION PROCEDURES

■ 14. The authority citation for part 413 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

PART 414—SAFETY APPROVALS

■ 15. The authority citation for part 414 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

PART 415—LAUNCH LICENSE

■ 16. The authority citation for part 415 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

PART 417—LAUNCH SAFETY

■ 17. The authority citation for part 417 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

PART 420—LICENSE TO OPERATE A LAUNCH SITE

■ 18. The authority citation for part 420 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 19. Revise § 420.41(a) to read as follows:

§ 420.41 License to operate a launch site—general.

(a) A license to operate a launch site authorizes a licensee to operate a launch site in accordance with the representations contained in the licensee's application, with terms and conditions contained in any license order accompanying the license, and subject to the licensee's compliance with 51 U.S.C. Subtitle V, chapter 509 and this chapter.

* * * * *

■ 20. Revise § 420.51(b) to read as follows:

§ 420.51 Responsibilities—general.

* * * * *

(b) A licensee is responsible for compliance with 51 U.S.C. Subtitle V, chapter 509 and for meeting the requirements of this chapter.

PART 431—LAUNCH AND REENTRY OF A RESUSABLE LAUNCH VEHICLE (RLV)

■ 21. The authority citation for part 431 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 22. Revise § 431.11 to read as follows:

§ 431.11 Additional license terms and conditions.

The FAA may amend an RLV mission license at any time by modifying or adding license terms and conditions to ensure compliance with 51 U.S.C. Subtitle V, chapter 509, and applicable regulations.

PART 433—LICENSE TO OPERATE A REENTRY SITE

■ 23. The authority citation for part 433 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

PART 435—REENTRY OF A REENTRY VEHICLE OTHER THAN A REUSABLE LAUNCH VEHICLE

■ 24. The authority citation for part 435 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 25. Revise § 435.11 to read as follows:

§ 435.11 Additional license terms and conditions.

The FAA may amend a reentry license at any time by modifying or adding license terms and conditions to ensure compliance with 51 U.S.C. Subtitle V, chapter 509, and applicable regulations.

PART 437—EXPERIMENTAL PERMITS

■ 26. The authority citation for part 437 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 27. Revise § 437.13 to read as follows:

§ 437.13 Additional experimental permit terms and conditions.

The FAA may modify an experimental permit at any time by modifying or adding permit terms and conditions to ensure compliance with 51 U.S.C. Subtitle V, chapter 509.

PART 440—FINANCIAL RESPONSIBILITY

■ 28. The authority citation for part 440 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

■ 29. Revise the introductory text and definition of ''financial responsibility'' in § 440.3 to read as follows:

§ 440.3 Definitions.

Except as otherwise provided in this section, any term used in this part and defined in 51 U.S.C. 50901–50923, or in § 401.5 of this chapter shall have the meaning contained therein. For purposes of this part—

* * * * *

Financial responsibility means capable of satisfying a liability obligation as required by 51 U.S.C Subtitle V, chapter 509.

* * * * *

■ 30. Revise § 440.5(c)(2) to read as follows:

§ 440.5 General.

* * * * *

(c) * * *

(2) Any covered claim of a third party for bodily injury or property damage arising out of any particular licensed activity exceeds the amount of financial responsibility required under § 440.9(c) of this part and does not exceed $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989) above such amount, and are payable pursuant to 51 U.S.C. 50915 and § 440.19 of this part. A claim of an employee of any entity listed in paragraphs (1)(ii) through (1)(iii) in the Third party definition in § 440.3 of this part for bodily injury or property damage is not a covered claim;

* * * * *

■ 31. Revise § 440.15(b) and (c)(1)(iii) to read as follows:

§ 440.15 Demonstration of compliance.

* * * * *

(b) Upon a complete demonstration of compliance with financial responsibility and allocation of risk requirements under this part, the requirements of this part shall preempt each and any provision in any agreement between the licensee or permittee and an agency of the United States governing access to or use of United States launch or reentry property or launch or reentry services for a licensed or permitted activity which addresses financial responsibility, allocation of risk and

related matters covered by 51 U.S.C. 50914, 50915.

* * * * *

(c) * * *

(1) * * *

(iii) In the event of any policy exclusions or limitations of coverage that may be considered usual under § 440.19(c), or for purposes of implementing the Government's waiver of claims for property damage under 51 U.S.C. 50914(b), certifying that insurance covering the excluded risks is not commercially available at reasonable cost; and

* * * * *

■ 32. Revise § 440.19(a), (d), (e) introductory text, and (f)(1) to read as follows:

§ 440.19 United States payment of excess third-party liability claims.

(a) The United States pays successful covered claims (including reasonable expenses of litigation or settlement) of a third party against a licensee, a customer, and the contractors and subcontractors of the licensee and the customer, and the employees of each involved in licensed activities, and the contractors and subcontractors of the United States and its agencies, and their employees, involved in licensed activities to the extent provided in an appropriation law or other legislative authority providing for payment of claims in accordance with 51 U.S.C. 50915, and to the extent the total amount of such covered claims arising out of any particular launch or reentry:

* * * * *

(d) Upon the expiration of the policy period prescribed in accordance with § 440.11(a), the United States shall provide for payment of claims that are payable under 51 U.S.C. 50915 from the first dollar of loss up to $1,500,000,000 (as adjusted for inflation occurring after January 1, 1989).

(e) Payment by the United States of excess third-party claims under 51 U.S.C. 50915 shall be subject to:

* * * * *

(f) * * *

(1) Prepare a compensation plan outlining the total amount of claims and meeting the requirements set forth in 51 U.S.C. 50915;

* * * * *

■ 33. Revise Appendix D to part 440 to read as follows:

Appendix D to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for a Crew Member

THIS AGREEMENT is entered into this ____ day of _____, by and among [name of Crew Member] (the ''Crew Member'') and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(f) of the Commercial Space Transportation Licensing Regulations, 14 CFR chapter III (the ''Regulations''). This agreement applies to the Crew Member's participation in activities that the FAA has authorized by license or permit during the Crew Member's employment with [Name of licensee or permittee].

In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Crew Member means:

(a) The above-named Crew Member,

(b) All the heirs, administrators, executors, assignees, next of kin, and estate of the above-named Crew Member, and

(c) Anyone who attempts to bring a claim on behalf of the Crew Member or for damage or harm arising out of the Bodily Injury, including Death, of the Crew Member.

License/Permit means License/Permit No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee/Permittee, including all license/permit orders issued in connection with the License/Permit.

Licensee/Permittee means the Licensee/Permittee and any transferee of the Licensee under 51 U.S.C. Subtitle V, chapter 509.

United States means the United States and its agencies involved in Licensed/Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, chapter 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, chapter 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Crew Member hereby waives and releases claims it may have against the United States, and against its respective Contractors and Subcontractors, for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against the Crew Member for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed/Permitted Activities, regardless of fault.

3. Assumption of Responsibility

(a) The Crew Member shall be responsible for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault. The Crew Member shall hold harmless the United States, and the Contractors and Subcontractors of each Party, for Bodily Injury, including Death, or Property Damage sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

(c) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Crew Member and to agree to be responsible, for any Property Damage the Contractors and Subcontractors sustain and for any Bodily Injury, including Death, or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(c), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims the Contractors and Subcontractors may have against Crew Member and to agree to be responsible, for any Property Damage they sustain, resulting from Permitted Activities, regardless of fault.

5. Indemnification

Crew Member shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss, or damage arising out of claims brought by anyone for Property Damage or Bodily Injury, including Death, sustained by Crew Member, resulting from Licensed/Permitted Activities.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Crew Member shall hold harmless the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury, including Death, or Property Damage, sustained by Crew Member, resulting from Licensed/Permitted Activities, regardless of fault, except to the extent that, as provided in section 6(b) of this Agreement, claims result from willful misconduct of the United States or its agents.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by the United States of any claim by an employee of the United States, respectively, including

a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed/Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless herein shall not apply to claims for Bodily Injury, including Death, or Property Damage resulting from willful misconduct of any of the Parties, the Contractors and Subcontractors of any of the Parties, and in the case of the United States, its agents.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

I [name of Crew Member] have read and understand this agreement and agree that I am bound by it.

Crew Member

Signature: _____

Printed Name: _____

Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government

By: _____

Its: _____

Associate Administrator for Commercial Space Transportation

■ 34. Revise Appendix E to part 440 to read as follows:

Appendix E to Part 440—Agreement for Waiver of Claims and Assumption of Responsibility for a Space Flight Participant

This agreement is entered into this ____ day of _____, by and among [name of Space Flight Participant] (the ''Space Flight Participant'') and the Federal Aviation Administration of the Department of Transportation, on behalf of the United States Government (collectively, the ''Parties''), to implement the provisions of section 440.17(e) of the Commercial Space Transportation Licensing Regulations, 14 CFR chapter III (the ''Regulations''). This agreement applies to Space Flight Participant's travel on [name of launch or reentry vehicle] of [name of Licensee or Permittee]. In consideration of the mutual releases and promises contained herein, the Parties hereby agree as follows:

1. Definitions

Space Flight Participant means

(a) The above-named Space Flight Participant,

(b) All the heirs, administrators, executors, assignees, next of kin, and estate of the above-named Space Flight Participant, and

(c) Anyone who attempts to bring a claim on behalf of the Space Flight Participant or for damage or harm arising out of the Bodily Injury, including Death, of the Space Flight Participant.

License/Permit means License/Permit No. _____ issued on _____, by the Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation, to the Licensee/Permittee, including all license/permit orders issued in connection with the License/Permit.

Licensee/Permittee means the Licensee/Permittee and any transferee of the Licensee under 51 U.S.C. Subtitle V, chapter 509.

United States means the United States and its agencies involved in Licensed/Permitted Activities.

Except as otherwise defined herein, terms used in this Agreement and defined in 51 U.S.C. Subtitle V, chapter 509—Commercial Space Launch Activities, or in the Regulations, shall have the same meaning as contained in 51 U.S.C. Subtitle V, chapter 509, or the Regulations, respectively.

2. Waiver and Release of Claims

(a) Space Flight Participant hereby waives and releases claims it may have against the United States, and against its respective Contractors and Subcontractors, for Bodily Injury, including Death, or Property Damage sustained by Space Flight Participant, resulting from Licensed/Permitted Activities, regardless of fault.

(b) The United States hereby waives and releases claims it may have against Space Flight Participant for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed/Permitted Activities, regardless of fault.

3. Assumption of Responsibility

(a) Space Flight Participant shall be responsible for Bodily Injury, including Death, or Property Damage sustained by the Space Flight Participant resulting from Licensed/Permitted Activities, regardless of fault. Space Flight Participant shall hold harmless the United States, and its Contractors and Subcontractors, for Bodily Injury, including Death, or Property Damage sustained by Space Flight Participant from Licensed/Permitted Activities, regardless of fault.

(b) The United States shall be responsible for Property Damage it sustains, and for Bodily Injury, including Death, or Property Damage sustained by its own employees, resulting from Licensed Activities, regardless of fault, to the extent that claims it would otherwise have for such damage or injury exceed the amount of insurance or demonstration of financial responsibility required under sections 440.9(c) and (e), respectively, of the Regulations.

(c) The United States shall be responsible for Property Damage it sustains, resulting from Permitted Activities, regardless of fault, to the extent that claims it would otherwise have for such damage exceed the amount of insurance or demonstration of financial responsibility required under section 440.9(e) of the Regulations.

4. Extension of Assumption of Responsibility and Waiver and Release of Claims

(a) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(b), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Space Flight Participant, and to agree to be responsible, for any Property Damage they sustain and for any Bodily Injury, including Death, or Property Damage sustained by their own employees, resulting from Licensed Activities, regardless of fault.

(b) The United States shall extend the requirements of the waiver and release of claims, and the assumption of responsibility as set forth in paragraphs 2(b) and 3(c), respectively, to its Contractors and Subcontractors by requiring them to waive and release all claims they may have against Space Flight Participant, and to agree to be responsible, for any Property Damage the Contractors and Subcontractors sustain, resulting from Permitted Activities, regardless of fault.

5. Indemnification

Space Flight Participant shall hold harmless and indemnify the United States and its agencies, servants, agents, subsidiaries, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims brought by anyone for Property Damage or Bodily Injury, including Death, sustained by Space Flight Participant, resulting from Licensed/Permitted Activities.

6. Assurances Under 51 U.S.C. 50914(e)

Notwithstanding any provision of this Agreement to the contrary, Space Flight Participant shall hold harmless the United States and its agencies, servants, agents, employees and assignees, or any of them, from and against liability, loss or damage arising out of claims for Bodily Injury, including Death, or Property Damage, sustained by Space Flight Participant, resulting from Licensed/Permitted Activities, regardless of fault, except to the extent that, as provided in section 6(b) of this Agreement, claims result from willful misconduct of the United States or its agents.

7. Miscellaneous

(a) Nothing contained herein shall be construed as a waiver or release by the United States of any claim by an employee of the United States, respectively, including a member of the Armed Forces of the United States, for Bodily Injury or Property Damage, resulting from Licensed/Permitted Activities.

(b) Notwithstanding any provision of this Agreement to the contrary, any waiver, release, assumption of responsibility or agreement to hold harmless herein shall not apply to claims for Bodily Injury, including Death, or Property Damage resulting from willful misconduct of any of the Parties, the Contractors, Subcontractors, and agents of the United States, and Space Flight Participant.

(c) This Agreement shall be governed by and construed in accordance with United States Federal law.

In witness whereof, the Parties to this Agreement have caused the Agreement to be duly executed by their respective duly authorized representatives as of the date written above.

I [name of Space Flight Participant] have read and understand this agreement and agree that I am bound by it.

Space Flight Participant
Signature: _____
Printed Name: _____
Federal Aviation Administration of the Department of Transportation on Behalf of the United States Government
By: _____
Its: _____
Associate Administrator for Commercial Space Transportation

PART 460—HUMAN SPACE FLIGHT REQUIREMENTS

■ 35. The authority citation for part 460 is revised to read as follows:

Authority: 51 U.S.C. 50901–50923.

Title 49—Transportation

Subtitle A—Office of the Secretary of Transportation

PART 1—ORGANIZATION AND DELEGATION OF POWERS AND DUTIES

■ 36. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; 46 U.S.C. 2104(a); 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2); Pub. L. 101–552, 104 Stat. 2736; Pub. L. 106–159, 113 Stat. 1748; Pub. L. 107–71, 115 Stat. 597; Pub. L. 107–295, 116 Stat. 2064; Pub. L. 108–136, 117 Stat. 1392; Pub. L. 101–115, 103 Stat. 691; Pub. L. 108–293, 118 Stat. 1028; Pub. L. 109–364, 120 Stat. 2083; Pub. L. 110–140, 121 Stat. 1492; Pub. L. 110–432, 122 Stat. 4848.

■ 37. Revise § 1.47(v) to read as follows:

§ 1.47 Delegations to Federal Aviation Administrator.

* * * * *

(v) Carry out the functions vested in the Secretary by 51 U.S.C. Subtitle V.

* * * * *

Issued in Washington, DC, on March 25, 2012.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. 2012–8196 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240 and 260

[Release Nos. 33–9308; 34–66703; 39–2484; File No. S7–22–11]

RIN 3235–AL16

Exemptions for Security-Based Swaps Issued by Certain Clearing Agencies

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting exemptions under the Securities Act of 1933, the Securities Exchange Act of 1934, and the Trust Indenture Act of 1939 for security-based swaps issued by certain clearing agencies satisfying certain conditions. The final rules exempt transactions by clearing agencies in these security-based swaps from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as exempt these security-based swaps from Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met.

DATES: *Effective Date:* The final rules are effective April 16, 2012.

FOR FURTHER INFORMATION CONTACT: Andrew Schoeffler, Special Counsel, Office of Capital Markets Trends, Division of Corporation Finance, at (202) 551–3860, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are adopting Rule 239 under the Securities Act of 1933 (''Securities Act'').[1] We are also adopting Rule 12a–10 and an amendment to Rule 12h–1 under the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 4d–11 under the Trust Indenture Act of 1939 (''Trust Indenture Act'').[3]

I. Background and Summary

On July 21, 2010, the President signed the Dodd-Frank Act into law.[4] Title VII of the Dodd-Frank Act (''Title VII'') provides the Securities and Exchange Commission (''SEC'' or the ''Commission'') and the Commodity Futures Trading Commission (''CFTC'') with the authority to regulate over-the-counter (''OTC'') derivatives in light of the recent financial crisis.

Title VII provides that the CFTC will regulate ''swaps,'' the SEC will regulate ''security-based swaps,'' and the CFTC and SEC will jointly regulate ''mixed swaps.'' [5] Title VII amends the Exchange Act to require, among other things, the following: (1) Transactions in security-based swaps must be submitted for clearing to a clearing agency if such security-based swap is one that the Commission has determined is required to be cleared, unless an exception from mandatory clearing applies; [6] (2) transactions in security-based swaps must be reported to a registered security-based swap data repository (''SDR'') or the Commission; [7] and (3) if a security-based swap is subject to mandatory clearing, transactions in security-based swaps must be executed on an exchange or a registered or exempt security-based swap execution facility (''security-based SEF''), unless no exchange or security-based SEF makes such security-based swap available for trading or the security-based swap transaction is subject to the clearing exception in Exchange Act Section 3C(g).[8]

Title VII seeks to ensure that, wherever possible and appropriate, security-based swaps are cleared.[9]

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[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 78a *et seq.*

[3] 15 U.S.C. 77aaa *et seq.*

[4] The Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[5] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board of Governors of the Federal Reserve System, shall jointly further define the terms ''swap,'' ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement.'' These terms are defined in Sections 721 and 761 of the Dodd-Frank Act and, with respect to the term ''eligible contract participant,'' in Section 1a(18) of the Commodity Exchange Act (''CEA'') [7 U.S.C. 1a(18)], as re-designated and amended by Section 721 of the Dodd-Frank Act. In April 2011, the SEC and the CFTC jointly proposed rules and interpretations to further define the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement.'' *See Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Release No. 33–9204 (Apr. 29, 2011), 76 FR 29818 (May 23, 2011), corrected in Release No. 33–9204A (June 1, 2011), 76 FR 32880 (June 7, 2011). In December 2010, the SEC and the CFTC jointly proposed rules and interpretations to further define the terms ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant.'' *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Release No. 34–63452 (Dec. 7, 2010), 75 FR 80174 (Dec. 21, 2010) (''Intermediaries Definitions Release'').

[6] *See* Public Law 111–203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c–3]).

[7] *See* Public Law 111–203, §§ 763(i) and 766(a) (adding Exchange Act Sections 13(m)(1)(G) and 13A(a)(1) [15 U.S.C. 78m(m)(1)(G) and 78m–1(a)(1)], respectively).

[8] *See* Public Law 111–203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c–3]). *See also* Public Law 111–203, § 761 (adding Exchange Act Section 3(a)(77) [15 U.S.C. 78c(a)(77)] (defining the term ''security-based swap execution facility'')), and *Registration and Regulation of Security-Based Swap Execution Facilities,* Release No. 34–63825 (Feb. 2, 2011) 76 FR 10948 (Feb. 28, 2011) (''Security-Based SEF Proposing Release''). *See* footnote 12 below for a discussion of the clearing exception in Exchange Act Section 3C(g) [15 U.S.C. 78c–3(g)].

[9] *See, e.g.,* Report of the Senate Committee on Banking, Housing, and Urban Affairs regarding The Restoring American Financial Stability Act of 2010, S. Rep. No. 111–176 at 34 (stating that ''[s]ome parts of the OTC market may not be suitable for clearing and exchange trading due to individual business needs of certain users. Those users should retain the ability to engage in customized, uncleared

Paragraph (a)(1) of new Exchange Act Section 3C establishes a mandatory clearing requirement for certain security-based swaps.[10] Exchange Act Section 3C(b) sets forth a process by which we would determine whether a security-based swap or any group, category, type or class of security-based swap that a clearing agency plans to accept for clearing is required to be cleared.[11] If we make a determination that a security-based swap is required to be cleared, then parties may not engage in such a security-based swap without submitting it for clearing, unless an exception applies.[12] If we make a determination that a security-based swap is not required to be cleared, such security-based swap may still be cleared on a non-mandatory basis by the clearing agency if it has rules that permit it to clear such security-based swap.[13] Further, pending the adoption of rules implementing the mandatory clearing requirement, a clearing agency may clear security-based swaps that the clearing agency's rules permit it to clear.[14]

Clearing agencies are broadly defined under the Exchange Act and may undertake a variety of functions.[15] One such function is to act as a central counterparty (''CCP'').[16] For example, when a security-based swap between two counterparties that are members of a CCP is executed and submitted for clearing, the original contract is extinguished and is replaced by two new contracts where the CCP is the buyer to the seller and the seller to the buyer. This process is known as ''novation.'' [17] At that point, the original counterparties are no longer counterparties to each other. As a result, the creditworthiness and liquidity of the CCP is substituted for the creditworthiness and liquidity of the original counterparties.[18]

Under the rules we proposed regarding mandatory clearing, to meet the clearing requirement in Exchange Act Section 3C, the parties would be required to submit security-based swaps required to be cleared to a clearing agency that functions as a CCP for central clearing.[19] Those proposed rules also would establish procedures for a clearing agency to submit to us for a review each security-based swap, or group, category, type or class of security-based swap that the clearing agency plans to accept for clearing. We would review the submission and make a determination about whether the security-based swap, or group, category, type or class of security-based swap, is required to be cleared.[20] Under the statute and the proposed rules, the submission would be publicly available and a public comment period would be provided with respect to whether the clearing requirement will apply.[21]

If we determine that a security-based swap, or group, category, type, or class of security-based swap, is required to be cleared, counterparties would be required to submit such security-based swaps negotiated and entered into bilaterally to the clearing agency for novation.[22] If we determine that a security-based swap, or group, category, type, or class of security-based swap, is not required to be cleared, such security-based swap, or group, category, type, or class of security-based swap, may still be cleared on a voluntary basis by a clearing agency that functions as a CCP if the clearing agency has rules that permit it to clear such security-based swap.[23] For security-based swaps submitted for novation, the CCP will be the issuer of new security-based swaps.

Because the definition of ''security'' in the Securities Act was amended in Title VII to include security-based swaps,[24] the novation of a security-based swap by a clearing agency functioning as a central counterparty involves an offer and sale by the clearing agency of a security (the security-based swap) under the Securities Act. The Securities Act requires that any offer and sale of a security must either be registered under the Securities Act or made pursuant to an exemption from registration.[25] Certain provisions of the Exchange Act relating to the registration of classes of securities and the indenture qualification provisions of the Trust Indenture Act also potentially will apply to security-based swaps. The provisions of Section 12 of the Exchange Act could, without an exemption, require that security-based swaps be registered before a transaction could be effected on a national securities exchange.[26] In addition, registration of a class of security-based swaps under Section 12(g) of the Exchange Act will be required if the security-based swap is considered an equity security and there are more than 500 record holders of a

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contracts while bringing in as much of the OTC market under the centrally cleared and exchange-traded framework as possible.'').

[10] Section 763(a) of the Dodd-Frank Act added Section 3C to the Exchange Act. *See* 15 U.S.C. 78c–3. *See also Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations,* Release No. 34–63557 (Dec. 15, 2010), 75 FR 82490 (Dec. 30, 2010) (''Mandatory Clearing Proposing Release'').

[11] *See* Exchange Act Section 3C(b) [15 U.S.C. 78c–3(b)] and Mandatory Clearing Proposing Release. In the Mandatory Clearing Proposing Release, we proposed rules to establish processes for (i) clearing agencies registered with the Commission to submit for review each security-based swap, or any group, category, type or class of security-based swaps, that the clearing agency plans to accept for clearing for a determination by the Commission of whether the security-based swap, or group, category, type or class of security-based swap is required to be cleared, and to determine the manner of notice the clearing agency must provide to its members of such submission, and (ii) how the Commission may stay the requirement that a security-based swap is subject to mandatory clearing.

[12] *See* Exchange Act Section 3C(g) [15 U.S.C. 78c–3(g)] and Mandatory Clearing Proposing Release. Section 3C(g)(1) provides that a security-based swap otherwise subject to mandatory clearing is not required to be cleared if one party to the security-based swap is not a financial entity, is using security-based swaps to hedge or mitigate commercial risk, and notifies the Commission, in a manner set forth by the Commission, how it generally meets its financial obligations associated with entering into non-cleared security-based swaps. *See* 15 U.S.C. 78c–3(g)(1).

[13] *See* 15 U.S.C. 78s(b) and 12 U.S.C. 5465(e). *See also* Mandatory Clearing Proposing Release.

[14] Currently, three clearing agencies are permitted to clear certain credit default swaps, which are security-based swaps. *See* footnote 30 below. A clearing agency could begin clearing other security-based swaps if its rules permit clearing of such other security-based swaps.

[15] *See* Exchange Act Section 3(a)(23) [15 U.S.C. 78c(a)(23)].

[16] A CCP is an entity that interposes itself between the counterparties to a securities transaction, acting functionally as the buyer to every seller and the seller to every buyer. *See Clearing Agency Standards for Operation and Governance,* Release No. 34–64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (''Clearing Agency Standards Proposing Release'').

[17] ''Novation'' is a ''process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.'' Committee on Payment and Settlement Systems, Technical Committee of the International Organization of Securities Commissioners, Recommendations for Central Counterparties (November 2004) at 66.

[18] *See* Cecchetti, Gyntelberg and Hollanders, *Central counterparties for over-the-counter derivatives,* BIS Quarterly Review, September 2009, *available at http://www.bis.org/publ/qtrpdf/r_qt0909f.pdf.*

[19] *See* Mandatory Clearing Proposing Release and proposed Rule 3Ca–2.

[20] *See* Mandatory Clearing Proposing Release and Public Law 111–203, § 763(a) (adding Exchange Act Section 3C [15 U.S.C. 78c–3]).

[21] *Id.*

[22] *See* Exchange Act Section 3C [15 U.S.C. 78c–3]) and proposed Exchange Act Rule 3Ca–2.

[23] *See* 15 U.S.C. 78s(b) and 12 U.S.C. 5465(e). As we note above, this ability to clear security-based swaps exists even before the adoption of rules implementing the mandatory clearing requirement.

[24] *See* Public Law 111–203, § 768(a)(1) (amending Securities Act Section 2(a)(1) [15 U.S.C. 77b(a)(1)]). *See also* Public Law 111–203, § 761(a)(2) (amending Exchange Act Section 3(a)(10) [15 U.S.C. 78c(a)(10)]).

[25] *See* Securities Act Section 5 [15 U.S.C. 77e].

[26] We note that a registered security-based SEF would not be a national securities exchange for purposes of the Exchange Act. Therefore, Exchange Act Sections 12(a) and (b) would not be applicable to transactions effected through such facilities.

particular class of security-based swaps at the end of a fiscal year. Further, without an exemption, the Trust Indenture Act requires qualification of an indenture for security-based swaps considered to be debt.[27]

The provisions of Title VII do not contain an exemption from Securities Act or Exchange Act registration, or from Trust Indenture Act qualification, for security-based swaps. However, we believe that compliance by the clearing agency with the registration and qualification provisions of these Acts likely will be impracticable and frustrate the purposes of Title VII. We have taken action in the past to facilitate clearing of certain credit default swaps by clearing agencies functioning as CCPs. For example, prior to enactment of the Dodd-Frank Act, we permitted five clearing agencies to clear certain credit default swaps (''eligible CDS'') on a temporary conditional basis.[28] To facilitate the operation of clearing agencies as CCPs for eligible CDS, we also adopted temporary exemptions from certain provisions of the Securities Act, the Exchange Act and the Trust Indenture Act, subject to certain conditions.[29] In the adopting release, we noted that we believed that the existence of CCPs for CDS would be important in helping to reduce counterparty risks inherent in the CDS market.[30] In addition to those actions with respect to eligible CDS, as discussed further below, we adopted exemptions under the Securities Act and the Exchange Act for certain standardized options.[31]

On June 9, 2011, we proposed exemptions from the registration requirements of the Securities Act and the Exchange Act, and from the qualification requirements of the Trust Indenture Act, for security-based swaps issued by certain clearing agencies satisfying certain conditions to facilitate the intent of Dodd-Frank Act with respect to mandatory clearing of security-based swaps.[32] The proposed rules would exempt certain transactions by clearing agencies in these security-based swaps from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, as well as exempt these security-based swaps from the Exchange Act registration requirements and from the provisions of the Trust Indenture Act, provided certain conditions are met.[33]

The Proposing Release requested comment on a variety of significant aspects of the proposed exemptions. We received seven comment letters in connection with the Proposing Release, of which six commented on the proposed exemptions.[34] Most

[27] *See* 15 U.S.C. 77aaa *et seq.*

[28] *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE Clear Europe Limited Related to Central Clearing of Credit Default Swaps, and Request for Comments,* Release No. 34–60372 (Jul. 23, 2009), 74 FR 37748 (Jul. 29, 2009); *Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with Request on Behalf of Eurex Clearing AG Related to Central Clearing of Credit Default Swaps, and Request for Comments,* Release No. 34–60373 (Jul. 23, 2009), 74 FR 37740 (Jul. 29, 2009); *Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request of Chicago Mercantile Exchange Inc. and Citadel Investment Group, L.L.C. Related to Central Clearing of Credit Default Swaps, and Request for Comments,* Release No. 34–59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009); *Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments,* Release No. 34–59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009); and *Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request of LIFFE Administration and Management and LCH.Clearnet Ltd. Related to Central Clearing Of Credit Default Swaps, and Request for Comments,* Release No. 34–59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009). The Commission subsequently extended and, in certain cases, modified certain of these temporary exemptive orders. *See* Release No. 34–61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010) and Release No. 34–63389 (Nov. 29, 2010), 75 FR 75520 (Dec. 3, 2010) (extending the order granted to ICE Clear Europe, Limited); Release No. 34–61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) and Release No. 34–63390 (Nov. 29, 2010), 75 FR 75518 (Dec. 3, 2010) (extending and modifying the order granted to Eurex Clearing AG); Release No. 34–61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), Release No. 34–61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010), and Release No. 34–63388 (Nov. 29, 2010), 75 FR 75522 (Dec. 3, 2010) (extending and modifying the order granted to Chicago Mercantile Exchange Inc.); and Release No. 34–61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), Release No. 34–61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010), and Release No. 34–63387 (Nov. 29, 2010), 75 FR 75502 (Dec. 3, 2010) (extending and modifying the order granted to ICE US Trust LLC). LIFFE A&M and LCH.Clearnet Ltd. allowed their temporary exemptive orders to lapse without seeking an extension.

[29] *See Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps,* Release No. 33–8999 (Jan. 14, 2009), 74 FR 3967 (Jan. 22, 2009) (''Temporary CDS Exemptions Release''). The temporary rules exempt eligible credit default swaps from all provisions of the Securities Act, other than the Section 17(a) anti-fraud provisions, the Exchange Act registration requirements, and the provisions of the Trust Indenture Act, provided certain conditions were met (''temporary exemptions for eligible CDS''). We subsequently extended the expiration date of the temporary rules until April 16, 2012. *See Extension of Temporary Exemptions for Eligible Credit Default Swaps to Facilitate Operation of Central Counterparties to Clear and Settle Credit Default Swaps,* Release No. 33–9232 (Jul. 1, 2011), 76 FR 40223 (Jul. 8, 2011) (''Temporary CDS Exemptions Extension Release'').

[30] Title VII contains provisions that ''deem registered'' as a clearing agency for the purposes of clearing security-based swaps clearing agencies that met certain conditions. *See* Public Law 111–203, § 763(b) (adding Exchange Act Section 17A(l) [15 U.S.C. 78q–1(l)]. Three clearing agencies that had temporary exemptive orders permitting them to clear eligible CDS were deemed registered under this provision and currently are performing the functions of a CCP for eligible CDS. These clearing agencies are ICE Clear Credit LLC (f/k/a ICE U.S. Trust LLC), ICE Clear Europe, Ltd., and Chicago Mercantile Exchange Inc. As a result of the deemed registered provision, we had to grant a temporary exemptive order to these clearing agencies only relating to Sections 5 and 6 of the Exchange Act. This temporary exemptive order will expire upon the earliest compliance date set forth in any of the final Title VII rules regarding registration of security-based SEFs. *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* Release No. 34–64795 (Jul. 1, 2011). The new temporary exemptive order contains conditions similar to those set forth in the temporary exemptive orders in effect prior to the deemed registered provisions pursuant to which certain clearing agencies were permitted to clear eligible CDS. *See* footnote 28 above.

[31] *See Exemption for Standardized Options From Provisions of the Securities Act of 1933 and From the Registration Requirements of the Securities Exchange Act of 1934,* Release No. 33–8171 (Dec. 23, 2002), 68 FR 1 (Jan. 2, 2003) (''Standardized Options Release''). *See also* Securities Act Rule 238 [17 CFR 230.238] and Exchange Act Rule 12h–1(d) [17 CFR 240.12h–1(d)].

[32] *See Exemptions For Security-Based Swaps Issued By Certain Clearing Agencies,* Release No. 33–9222 (June 9, 2011), 76 FR 34920 (June 15, 2011) (''Proposing Release'').

[33] In July 2011, the Commission adopted interim exemptions under the Securities Act, the Exchange Act and the Trust Indenture Act for uncleared security-based swaps that prior to July 16, 2011 were ''security-based swap agreements'' and not securities but became securities due to the provisions of Title VII. *See Exemptions for Security-Based Swaps,* Release No. 33–9231 (Jul. 1, 2011), 76 FR 40605 (Jul. 11, 2011) (''Interim SBS Exemptions Release''). These interim exemptions will expire upon the compliance date for the final rules the Commission may adopt further defining both the terms ''security-based swap'' and ''eligible contract participant.'' Further, the Division of Corporation Finance issued a no-action letter that addressed the availability of these interim exemptions to offers and sales of security-based swaps that are based on or reference only loans or indexes only of loans. *See* Cleary Gottlieb Steen & Hamilton LLP (July 15, 2011). We understand that the staff intends to withdraw this no-action letter upon the compliance date for the final rules the Commission may adopt further defining both the terms ''security-based swap'' and ''eligible contract participant.''

[34] The Commission received the following letters that commented specifically on the proposed exemptions: Letter from Richard M. Whiting, Executive Director and General Counsel, Financial Services Roundtable, Robert Pickel, Chief Executive Officer, International Swaps and Derivatives Association, and Kenneth E. Bentsen, Jr., Executive Vice President, Public Policy and Advocacy, Securities Industry and Financial Markets Association (''FSR/ISDA/SIFMA Letter''); letter from Bruce Bolander, Gibson, Dunn & Crutcher LLP, dated Aug. 22, 2011 (''Gibson Dunn Letter''); letter from Scott Pintoff, General Counsel, GFI Group Inc., dated Jul. 25, 2011 (''GFI Letter''); letter from Lawrence J. Kramer, dated Jun. 22, 2011 (''Kramer Letter''); letter from Thomas A. Prentice, Ph.D., dated Jun. 21, 2011 (''Prentice Letter''); and letter from William Michael Cunningham, Creative Investment Research, Inc., dated Jul. 4, 2011 (''CIR Letter''). The letter from Scott C. Goebel, Senior Vice President, General Counsel, Fidelity

commentators supported the proposed exemptions and did not suggest any changes to the exemptions as they applied to security-based swaps issued by a registered or exempt clearing agency in its function as a CCP.[35] As discussed below, a few commentators suggested additional exemptions for security-based swaps. We have reviewed and considered all of the comments that we received relating to the proposed exemptions.

As described in detail below, we are adopting the rules as proposed without modification. The exemptions we are adopting in this release cover all security-based swaps that may be cleared, including eligible CDS that currently are being issued in reliance on the temporary exemptions for eligible CDS that expire on April 16, 2012.

II. Discussion of the Final Rules and Amendments

A. Exemption From Securities Act Registration—Securities Act Rule 239

1. Proposed Rule

We proposed Securities Act Rule 239 to exempt the offer and sale of security-based swaps that are or will be issued to eligible contract participants by, and in a transaction involving, a clearing agency that is registered under Section 17A of the Exchange Act or exempt from such registration by rule, regulation or order of the Commission in its function as a CCP, from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a), subject to certain conditions.

2. Comments

Commentators generally supported proposed Securities Act Rule 239.[36] We received only one specific comment on the proposed rule.[37] This commentator suggested that the Commission provide an exemption under the Securities Act similar to the proposed rule for transactions in uncleared security-based swaps entered into between eligible contract participants and effected through any trading platform.[38] This commentator did not provide any explanation as to why such exemption was needed, including how security-based swap trading platforms operate, that would enable us to evaluate whether another exemption under the Securities Act is necessary or appropriate.

We requested comment in the Proposing Release and in the Interim SBS Exemptions Release as to whether security-based swaps are or will be transacted in a manner that would not permit the parties to rely on existing exemptions under the Securities Act.[39] We also requested comment in these releases on whether the Commission should consider additional exemptions under the Securities Act for security-based swaps traded on a national securities exchange or security-based SEF with eligible contract participants.[40] This commentator's suggestion related to exemptions affecting transactions that do not involve registered or exempt clearing agencies and appears responsive to the request for whether additional exemptions should be considered. Thus, we believe that this commentator's suggestion relating to uncleared security-based swaps is more appropriate to be considered in connection with the Interim SBS Exemptions Release and, therefore, we are not adopting rules at this time providing exemptions that would apply to uncleared security-based swaps, including those that may be effected on or through trading platforms.[41]

3. Final Rule

We are adopting Securities Act Rule 239 without any changes from the proposal. The final rule exempts the offer and sale of security-based swaps that are or will be issued to eligible contract participants by, and in a transaction involving, a clearing agency that is registered under Section 17A of the Exchange Act[42] or exempt from such registration[43] by rule, regulation or order of the Commission (''registered or exempt clearing agency'') in its function as a CCP, from all provisions of the Securities Act, except the anti-fraud provisions of Section 17(a), subject to the conditions described below.[44] Thus, Securities Act Rule 239 as adopted permits the offer and sale of security-based swaps to eligible contract participants that are or will be issued by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP without requiring compliance with Section 5 of the Securities Act.[45]

Consistent with the proposal, under Securities Act Rule 239 as adopted, the offer and sale of a security-based swap is exempt from the provisions of the Securities Act, other than Section 17(a), if the following conditions are satisfied:

- The security-based swap is or will be issued by a clearing agency that is registered with us under Section 17A of the Exchange Act or exempt from such registration by rule, regulation or order of the Commission;

Investments, dated Dec. 8, 2011, did not address the proposed exemptions but commented on rules the Commodity Futures Trading Commission proposed relating to collateral posted in connection with cleared derivatives trades.

[35] *See* FSR/ISDA/SIFMA Letter; Gibson Dunn Letter; GFI Letter; and CIR Letter. We also received comments that disagreed with CDS trading or the SBS exemptions generally. One individual commentator did not believe the Commission should adopt the proposed exemptions because this commentator believes they would facilitate trading in CDS, which this commentator objected to in some circumstances. *See* Kramer Letter. Another individual commentator opposed the proposed exemptions, but did not provide any explanation for the reason. *See* Prentice Letter.

[36] *See* FSR/ISDA/SIFMA Letter; Gibson Dunn Letter; GFI Letter; and CIR Letter.

[37] *See* GFI Letter.

[38] *Id.*

[39] *See* Proposing Release at 30; and Interim SBS Exemptions Release at 16.

[40] *Id.*

[41] The Commission received one comment letter on the Interim SBS Exemptions Release from an individual that opposed the interim exemptions; however, this commentator did not provide any explanation for the reason.

[42] *See* footnote 30 above for a discussion of the clearing agencies that are deemed registered for purposes of clearing security-based swaps. As noted above, three clearing agencies that had temporary exemptive orders relating to the clearing of eligible CDS were deemed registered under this provision and currently are performing the functions of a CCP for eligible CDS.

[43] The Dodd-Frank Act contains provisions permitting the Commission to provide exemptions from clearing agency registration with respect to security-based swaps in limited instances. *See* footnote 49 below. The final rules cover security-based swaps, including mixed swaps, issued by clearing agencies that the Commission specifically exempts from registration as a clearing agency by rule, regulation, or order.

[44] 15 U.S.C. 77q. This exemption is similar to the Securities Act exemptions for standardized options and security futures products. *See* Securities Act Rule 238 [17 CFR 230.238] and Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)].

[45] The exemption for the security-based swap transaction from Securities Act registration will not apply to any securities that may be delivered in settlement or payment of any obligations under the security-based swap (*e.g.* a physically settled credit default swap). With respect to such securities transactions, the parties to the security-based swap must either be able to rely on another exemption from the registration requirements of the Securities Act or must register such transaction. In evaluating the availability of an exemption from the Securities Act registration requirements, if such a security-based swap may be settled or paid through the delivery of a security, then the transaction in the underlying or referenced security will be considered to occur at the same time as the transaction in the related security-based swap. In this connection, we note that the Dodd-Frank Act amended Securities Act Section 2(a)(3) to provide that security-based swaps could not be used by an issuer, its affiliates, or underwriters to circumvent the registration requirements of Securities Act Section 5 with respect to the issuer's securities underlying the security-based swap. *See* 15 U.S.C. 77b(a)(3). As amended, Section 2(a)(3) provides that ''[a]ny offer or sale of a security-based swap by or on behalf of the issuer of the securities upon which such security-based swap is based or is referenced, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell such securities.'' As a result, such issuer, affiliate, or underwriter would have to comply with the registration requirements of the Securities Act with respect to such underlying or referenced security, unless another exemption from registration was available.

• The Commission has determined that the security-based swap is required to be cleared or the registered or exempt clearing agency is permitted to clear the security-based swap pursuant to its rules;

• The security-based swap is sold only to an eligible contract participant (as defined in Section 1a(18) of the Commodity Exchange Act) in a transaction involving the registered or exempt clearing agency in its function as a CCP with respect to the security-based swap; [46] and

• For each security-based swap that is offered or sold in reliance upon this exemption, the following information is included in an agreement covering the security-based swap the registered or exempt clearing agency provides to, or makes available to, its counterparty or is posted on a publicly available Web site maintained by the registered or exempt clearing agency:

• A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;

• A statement indicating the security or loan to be delivered (or class of securities or loans), or if cash settled, the security, loan or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and

• A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Exchange Act Section 13 or Section 15(d) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available and where the information is available.

We believe this exemption will further the goal in the Dodd-Frank Act of central clearing of security-based swaps. Without exempting the offers and sales of such security-based swaps by a registered or exempt clearing agency in its function as a CCP from the Securities Act (other than Section 17(a)), we believe that a registered or exempt clearing agency may not be able to clear security-based swaps in the manner contemplated by the Dodd-Frank Act and our proposed rules implementing its provisions. Therefore, we believe that with the above conditions, an exemption from the Securities Act is necessary and appropriate in the public interest and consistent with the protection of investors.

i. Registered or Exempt Clearing Agency Issuing Security-Based Swaps in Its Function as a CCP

Consistent with the proposal, the Securities Act exemption applies only to offers and sales of security-based swaps that are or will be issued by, and in a transaction involving, a clearing agency in its function as a CCP that is either registered with us or exempt from such registration by rule, regulation or order of the Commission. Registered clearing agencies are regulated by us under the Exchange Act and must comply with the standards in the Exchange Act, including the requirements of Section 17A.[47] The activities of such clearing agencies relating to the clearing or submission for clearing of security-based swaps are subject to regulation under the Exchange Act and applicable rules thereunder.[48] The Securities Act exemption also is available for security-based swaps that are issued by a clearing agency that we have exempted from registration with us by rule, regulation, or order, subject to such terms and conditions contained in any exemption.[49] We believe it is appropriate to make the Securities Act exemption available to security-based swaps issued by exempt clearing agencies because in granting an exemption the Commission could impose appropriate conditions to the availability of the exemption that would provide protection to investors.

The Securities Act exemption applies to the extent the clearing agency will issue or is issuing the security-based swap in its function as a CCP and applies to transactions involving such clearing agency.[50] We note that a clearing agency's role as a CCP and an issuer of security-based swaps is similar to a clearing agency's role with respect to standardized options.[51] We believe that a clearing agency's role as a CCP for security-based swaps, similar to a clearing agency's role with respect to standardized options, is fundamentally different from a conventional issuer that registers transactions in its securities under the Securities Act.[52] For example, the purchaser of a security-based swap does not, except in the most formal sense, make an investment decision regarding the clearing agency.[53] Rather, the security-based swap investment decision is based on the referenced security, loan, narrow-based security index, or issuer. In this circumstance, coupled with the other conditions to the Securities Act exemption, we do not believe that Securities Act registration of the offer and sale of security-based swaps by a clearing agency in its

[46] Eligible contract participant is defined in CEA Section 1a(18) (as re-designated and amended by Section 721 of the Dodd-Frank Act). *See also* Public Law 111–203, § 761(a) (adding Exchange Act Section 3(a)(65) [15 U.S.C. 78c(a)(65)], which refers to the definition of eligible contract participant in the CEA). The definition of eligible contract participant contained the CEA (as amended by the Dodd-Frank Act) includes: Financial institutions; insurance companies; investment companies; commodity pools; business entities, such as corporations, partnerships, and trusts; employee benefit plans; government entities, such as the United States, a State or local municipality, a foreign government, a multinational or supranational government entity, or an instrumentality, agency or department of such entities; market professionals, such as broker dealers, futures commission merchants, floor brokers, and investment advisors; and natural persons with a specified dollar amount invested on a discretionary basis. For certain of the entities and market professionals, the definition also contains certain conditions relating to the amount of assets or amount of monies invested on a discretionary basis. For a complete description of the definition, *see* CEA Section 1a(18) and Section 721 of the Dodd-Frank Act. Further, the Dodd-Frank Act authorized the CFTC and the SEC to jointly further define the definition of eligible contract participant. *See* Section 712(d)(1) of the Dodd-Frank Act. In December 2010, the CFTC and the SEC jointly proposed rules to further define the definition of eligible contract participant primarily relating to commodity pools and foreign exchange transactions. *See* Intermediaries Definitions Release.

[47] 15 U.S.C. 78q–1. *See also* discussion in Mandatory Clearing Proposing Release.

[48] *Id.*

[49] Section 763(b) of the Dodd-Frank Act amended the Exchange Act and added Section 17(k) [15 U.S.C. 78q(k)], which provides that ''[t]he Commission may exempt, conditionally or unconditionally, a clearing agency from registration under this section for the clearing of security-based swaps if the Commission determines that the clearing agency is subject to comparable, comprehensive supervision and regulation by the Commodity Futures Trading Commission or the appropriate government authorities in the home country of the agency. Such conditions may include, but are not limited to, requiring that the clearing agency be available for inspection by the Commission and make available all information requested by the Commission.'' Thus, although we have the authority under the Exchange Act, as amended by the Dodd-Frank Act, to provide exemptions from clearing agency registration, our authority to grant an exemption from registration for clearing agencies that clear security-based swaps is different than it is for other clearing agencies.

[50] As we noted above, when functioning as a CCP, a clearing agency's creditworthiness and liquidity are substituted for the creditworthiness and liquidity of the original counterparties. *See* footnote 18 above and accompanying text.

[51] *See* Standardized Options Release.

[52] Because the novation generally occurs after the counterparties have agreed to enter into the bilateral security-based swap being novated, the investment decision by the counterparties already has occurred.

[53] We note, however, that a member or other user of a clearing agency may have an interest in the financial condition of the clearinghouse because the member or user will be relying on the ability of the clearinghouse to meet its obligations with respect to cleared transactions. We have proposed that registered clearing agencies be required to make their audited financial statements and other information about themselves publicly available. *See* Clearing Agency Standards Proposing Release.

function as a CCP to eligible contract participants is necessary.

ii. Security-Based Swaps the Commission Determines Are Required To Be Cleared or That a Clearing Agency Is Permitted To Clear Pursuant to Its Rules

In the Mandatory Clearing Release, we proposed rules to implement the provisions of the Dodd-Frank Act regarding mandatory and voluntary clearing of security-based swaps, or groups, categories, or types or classes of security-based swaps.[54] Those proposed rules would establish procedures for a clearing agency to submit for a review the security-based swap, or group, category, type or class of security-based swap, that the clearing agency plans to accept for clearing. As proposed, we would review the submission and make a determination of whether the security-based swap, or group, category, type or class of security-based swap, is required to be cleared.[55]

Consistent with the purposes of the Dodd-Frank Act, the Securities Act exemption is intended to facilitate clearing of security-based swaps that the Commission determines are subject to mandatory clearing, or that are permitted to be cleared pursuant to the clearing agency's rules. Consequently, under the Securities Act exemption a registered or exempt clearing agency is entitled to rely on the exemption to issue, in its function as a CCP, security-based swaps that we determine are required to be cleared. In addition, the Securities Act exemption is available to a registered or exempt clearing agency issuing a security-based swap, in its function as a CCP, that is not subject to mandatory clearing but is permitted to be cleared pursuant to the clearing agency's rules. The Securities Act exemption is not available for security-based swaps issued by a registered or exempt clearing agency in its function as a CCP that are not required to be cleared or permitted by its rules to be cleared.

The Dodd-Frank Act also provides that if a security-based swap is subject to the mandatory clearing requirement, it must be traded on an exchange or a registered or exempt security-based SEF, unless no security-based SEF makes such security-based swap available to trade.[56] Thus, it is possible that a security-based swap could be subject to mandatory clearing without being traded on an exchange or security-based SEF. The Securities Act exemption is available for security-based swaps that are subject to the mandatory clearing requirement or are permitted to be cleared pursuant to the clearing agency's rules,[57] regardless of whether such security-based swaps also are traded on a national securities exchange or through a security-based SEF.[58] We believe that if the conditions to the Securities Act exemption are satisfied, then the protections provided for in the analogous exemptions for standardized options and security futures arising from the requirement for exchange trading, such as compliance with the statutory listing standards, are not needed here.[59] Unlike security future products that may be purchased by any person, under the Dodd-Frank Act security-based swaps may only be offered and sold to eligible contract participants either pursuant to an exemption from the registration requirements of the Securities Act and in transactions not effected on a national securities exchange or in registered offerings effected on a national securities exchange. No offers or sales of security-based swaps may be made to non-eligible contract participants unless there is an effective registration statement under the Securities Act covering transactions in such security-based swap[60] and any security-based swap transaction with a non-eligible contract participant must be effected on a national securities exchange.[61] As a result, security-based swaps issued by a registered or exempt clearing agency in its function as a CCP may only be offered and sold to eligible contract participants, unless there is an effective registration statement and the transaction is effected on a national securities exchange. Thus, because only eligible contract participants may enter into the security-based swaps not traded on a national securities exchange, we do not believe it is necessary to condition the Securities Act exemption on whether the security-based swap is traded on a national securities exchange. In addition, including such a provision could frustrate the goals of the Dodd-Frank Act because the Dodd-Frank Act did not restrict transactions with eligible contract participants to transactions on national securities exchanges. Consequently, the Securities Act exemption does not include such a requirement.

iii. Sales Only to Eligible Contract Participants

Under the Dodd-Frank Act, only an eligible contract participant may enter into security-based swaps other than on a national securities exchange.[62] In addition, security-based swaps that are not registered pursuant to the Securities Act can only be sold to eligible contract participants.[63] New Securities Act Section 5(d) specifically provides that it is unlawful to offer to buy, purchase, or sell a security-based swap to any person that is not an eligible contract participant, unless the transaction is registered under the Securities Act.[64] Given that Congress determined it is appropriate to limit the availability of registration exemptions under the Securities Act to eligible contract participants, consistent with the

[54] *See* Mandatory Clearing Proposing Release.

[55] *See* Mandatory Clearing Proposing Release. For those security-based swaps that are submitted and not required to be cleared, the clearing agency in its function as a CCP may still clear those security-based swaps if it is permitted by its rules.

[56] Exchange Act Section 3C(h) specifies that transactions in security-based swaps that are subject to the clearing requirement of Exchange Act Section 3C(a)(1) must be executed on an exchange or on a security-based SEF registered with us (or a security-based SEF exempt from registration), unless no exchange or security-based SEF makes the security-based swap available to trade or the security-based swap transaction is subject to the clearing exception in Exchange Act Section 3C(g). *See* Public Law 111–203, § 763 (adding Exchange Act Section 3C(h) [15 U.S.C. 78c–3(h)]). Exchange Act Section 3D(e) allows the Commission to exempt a security-based SEF from registration if the Commission finds that the security-based SEF is subject to comparable comprehensive supervision and regulation on a consolidated basis by the CFTC. *See* 15 U.S.C. 78c–4(e). The Commission proposed (but has not yet adopted) Regulation SB SEF under the Exchange Act that is designed to create a registration framework for security-based SEFs, establish rules with respect to Title VII's requirement that a security-based SEF must comply with the fourteen enumerated core principles and enforce compliance with those principles, and implement a process for a security-based SEF to submit to the Commission proposed changes to its rules. *See* footnote 8 above.

[57] The exemption would be limited to security-based swaps issued by and in a transaction involving a registered or exempt clearing agency in its function as a CCP.

[58] *See* Security-Based SEF Proposing Release.

[59] Standardized options and security futures products are only traded on a national securities exchange and thus are subject to listing standards. *See* Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)], Exchange Act Section 12(a) [15 U.S.C. 78l(a)], and Exchange Act Rule 12h–1(e) [17 CFR 240.12h–1(e)]. *See also* footnote 31 above.

[60] *See* Public Law 111–203, § 768(b) (adding Securities Act Section 5(d) [15 U.S.C. 77e(d)]).

[61] *See* Public Law 111–203, § 763(e) (adding Exchange Act Section 6(l) [15 U.S.C. 78f(l)]).

[62] *See also* Public Law 111–203, § 763(e) (adding Exchange Act Section 6(*l*) [15 U.S.C. 78f(l)]).

[63] *See* Public Law 111–203, § 768(b) (adding Securities Act Section 5(d) [15 U.S.C. 77e(d)]).

[64] *See* Section 768(b) of the Dodd-Frank Act (adding new Securities Act Section 5(d) [15 U.S.C. 77e(d)]) (''Notwithstanding the provisions of section 3 or 4, unless a registration statement meeting the requirements of section 10(a) is in effect as to a security-based swap, it shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell, offer to buy or purchase or sell a security-based swap to any person who is not an eligible contract participant as defined in section 1a(18) of the Commodity Exchange Act [7 U.S.C. 1a(18)].'').

proposal, we believe it is appropriate to limit the Securities Act exemption to security-based swaps entered into with eligible contract participants.

iv. Disclosures Relating to the Security-Based Swaps

The Securities Act exemption requires the registered or exempt clearing agency to disclose, either in its agreement regarding the security-based swap or on its publicly available Web site, certain information with respect to the security-based swap. Consistent with the proposal, this information includes the following:

- A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;
- A statement indicating the security or loan to be delivered (or class of securities or loans), or if cash settled, the security, loan, or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and
- A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Exchange Act Section 13 or Section 15(d) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available, and, if so, the location where the information is available.

The purpose of the requirement relating to the availability of information is to inform investors about whether there is publicly available information about the issuer of the referenced security or the referenced issuer.[65] We are not conditioning the Securities Act exemption on whether the issuer is subject to Exchange Act reporting or whether there is publicly available financial information about such issuer. As noted above, the Securities Act exemption for offers and sales of security-based swaps issued by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP is limited to security-based swaps entered into with an eligible contract participant. The Dodd-Frank Act did not restrict eligible contract participants' ability to enter into security-based swaps based on whether or not there is publicly-available information about the issuer of the referenced security or loan or the referenced issuer.[66] As a result, and in light of the nature of the other regulatory safeguards,[67] we are not conditioning the Securities Act exemption on the actual availability or delivery of such information.

While the Dodd-Frank Act does not condition clearing of security-based swaps on the availability of such information, we believe it is important for eligible contract participants to understand whether such information is publicly available. The availability (or absence) of public information is generally important to eligible contract participants and the registered or exempt clearing agency in evaluating and pricing the security-based swap. Therefore, the Securities Act exemption requires disclosure about whether such information is available.

If the issuer of the referenced security or loan or the referenced issuer is not subject to Exchange Act reporting, but there is publicly available information about the issuer, the clearing agency is required under the Securities Act exemption to disclose that fact and disclose where the information is available. This disclosure could include, for example, a statement that the issuer is listed on a particular foreign exchange and where information about issuers on such exchange can be found.

Under the Securities Act exemption, the required information could be provided in the agreement covering the security-based swap the registered or exempt clearing agency provides or makes available to the counterparty or on a publicly available Web site maintained by the clearing agency. We understand that master agreements and related schedules for security-based swaps generally contain detailed information about the terms of the security-based swaps.[68] In addition, each registered clearing agency is required to post and maintain a current and complete version of its rules on its Web site. Thus, we believe that parties engaging in security-based swaps transactions would be familiar with looking to the agreements or a clearing agency's Web site to obtain information. Given that clearing agencies generally provide information in agreements and maintain publicly available Web sites, we believe that providing the information we are requiring to be disclosed in the agreement for the security-based swap or on the clearing agency's publicly available Web site would not pose significant burdens for clearing agencies.

B. Exemptions From Exchange Act Section 12 Registration—Exchange Act Rules 12a–10 and Rule 12h–1(h)

1. Proposed Rule and Amendment

We proposed Exchange Act Rule 12a–10 to exempt security-based swaps that are or have been issued by a registered or exempt clearing agency in reliance on the proposed exemption under the Securities Act from the registration

[65] For issuers that are not subject to Exchange Act reporting requirements, the following are some non-exclusive examples of issuers that may have information publicly available, including financial information about the issuer, or circumstances in which public information about a security may be available: (1) An entity that voluntarily files Exchange Act reports; (2) an entity that makes Securities Act Rule 144(d)(4) information available to any person; (3) a foreign private issuer whose securities are listed outside the United States; (4) a foreign sovereign issuer with outstanding debt; (5) for periods before July 21, 2010 an asset-backed security issued in a registered transaction with publicly available distribution reports (for periods after July 21, 2010, asset-backed issuers will continue to be subject to reporting); and (6) an asset-backed security issued or guaranteed by the Federal National Mortgage Association (''Fannie Mae''), the Federal Home Loan Mortgage Corporation (''Freddie Mac'') or the Government National Mortgage Association (''Ginnie Mae'').

[66] We note that eligible contract participants may enter into security-based swaps on a bilateral basis in reliance on an available exemption from the registration requirements of the Securities Act. The exemptions we are adopting in this release to facilitate clearing of security-based swaps do not apply to these bilateral transactions, even if they subsequently are novated or otherwise cleared in transactions to which the exemptions we are adopting in this release apply.

[67] As part of the process for submitting security-based swaps to us for a determination of whether such security-based swaps are subject to mandatory clearing, the Dodd-Frank Act requires us to take into account several factors, such as the existence of significant outstanding notional exposures, trading liquidity, and adequate pricing data, when reviewing a submission to clear security-based swaps by a clearing agency. Much of the information that the registered or exempt clearing agency will be required to include in its agreement or on its Web site, as a condition to the exemption, likely will already be included in the description of the security-based swaps that the clearing agency identifies publicly that it is going to clear. In addition to the security-based swap submission provisions, the Dodd-Frank Act and the rules proposed under the Act relating to reporting requirements, trade acknowledgments and verification, and business conduct would require certain disclosures relating to security-based swaps, some of which may potentially overlap with the information requirement we are adopting in this release. *See, e.g.,* Mandatory Clearing Proposing Release, *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010) (''SBSR Proposing Release''), *Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Release No. 34–63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011) (''Trade Acknowledgement and Verification Proposing Release''), and *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Release No. 34–64766 (Jun. 29, 2011), 76 FR 42396 (Jul. 18, 2011).

[68] In addition, the rules proposed in the Trade Acknowledgement and Verification Proposing Release and the SBSR Proposing Release would require information about the security-based swap to be reported to the security-based swap data repository.

requirements of Section 12(a) of the Exchange Act under certain conditions. We also proposed an amendment to Exchange Act Rule 12h–1 to exempt security-based swaps that are or have been issued by a registered or exempt clearing agency from the registration requirements of Section 12(g) of the Exchange Act under certain conditions.

2. Comments

Commentators generally supported the proposed rule and amendment.[69] We received only two specific comments on the proposed rule and amendment.[70] One commentator suggested that the Commission provide exemptions under the Exchange Act similar to the proposed rule and amendment for transactions in uncleared security-based swaps entered into between eligible contract participants and effected through any trading platform.[71] This commentator did not provide any explanation as to why such exemptions were needed, including how security-based swap trading platforms operate, that would enable us to evaluate whether other exemptions under the Exchange Act are necessary or appropriate. Another commentator suggested that the Commission provide an exemption under Section 12(g) of the Exchange Act similar to the proposed amendment for uncleared security-based swaps transactions entered into solely between eligible contract participants.[72]

We requested comment in the Proposing Release and in the Interim SBS Exemptions Release as to whether security-based swaps are or will be transacted in a manner that would not permit the parties to rely on existing exemptions under the Exchange Act.[73] We also requested comment in these releases on whether the Commission should consider additional exemptions under the Exchange Act for security-based swaps traded on a national securities exchange or security-based SEF with eligible contract participants.[74] These commentators' suggestions related to exemptions affecting transactions that do not involve registered or exempt clearing agencies and appear responsive to the request for whether additional exemptions should be considered. Thus, we believe that these commentators' suggestions relating to uncleared security-based swaps are more appropriate to be considered in connection with the Interim SBS Exemptions Release and, therefore, we are not adopting rules at this time providing exemptions that would apply to uncleared security-based swaps, including those that may be effected on or through trading platforms.[75]

3. Final Rule and Amendment

Section 12(a) of the Exchange Act makes it unlawful for any broker or dealer to effect a transaction in a non-exempt security on a national securities exchange unless the security has been registered under Section 12(b) of the Exchange Act for trading on that exchange. Section 12(g)(1) of the Exchange Act, as modified by rule, requires any issuer with more than $10,000,000 in total assets and a class of equity securities held by 500 or more persons to register such security with us.[76]

Rule 12b–1 under the Exchange Act prescribes the procedures for registration under both Section 12(b) and Section 12(g) of the Exchange Act. Absent an exemption, security-based swaps that will be traded on national securities exchanges would be required to be registered under Section 12(b) of the Exchange Act. A registered or exempt clearing agency issuing a security-based swap would be required, without an available exemption, to register the security-based swaps under Section 12(b) of the Exchange Act before such security-based swaps could be traded on a national securities exchange. In addition, if the security-based swaps were considered equity securities of the registered or exempt clearing agency, the registration provisions of Section 12(g) of the Exchange Act could apply.

As noted above, just as a registered or exempt clearing agency is different from a conventional issuer that registers transactions in its securities under the Securities Act, it is also different with respect to registering a class of its securities, in this case the security-based swap issued by the registered or exempt clearing agency, under the Exchange Act. Therefore, we are adopting two rules relating to Exchange Act registration of security-based swaps that are or have been issued by a registered or exempt clearing agency in its function as a CCP.

We are adopting new Rule 12a–10 under the Exchange Act without any changes from the proposal to exempt security-based swaps that are or have been issued by a registered or exempt clearing agency in reliance on Securities Act Rule 239 from Section 12(a) of the Exchange Act under certain conditions.[77] Exchange Act Rule 12a–10 as adopted provides that Exchange Act Section 12(a) does not apply to any security-based swap that:

- Is or will be issued by a registered or exempt clearing agency in its function as a CCP with respect to the security-based swap;
- The Commission has determined is required to be cleared, or that the clearing agency is permitted to clear pursuant to its rules;
- Is sold to an eligible contract participant in reliance on Securities Act Rule 239; and
- Is traded on a national securities exchange registered pursuant to Section 6(a) of the Exchange Act.

We also are adopting an amendment to Exchange Act Rule 12h–1 without any changes from the proposal to exempt security-based swaps that are or have been issued by a registered or exempt clearing agency from the provisions of Section 12(g) of the Exchange Act under certain conditions.[78] Exchange Act Rule 12h–1(h) as adopted exempts from Section 12(g) of the Exchange Act security-based swaps that are issued by a registered or exempt clearing agency in its function as a CCP, whether or not such security-based swap is traded on a national securities exchange registered pursuant to Section 6(a) of the Exchange Act or a registered or exempt security-based SEF.[79] In addition, the security-based swaps being issued by the registered or exempt clearing agency in its function as a CCP must be required to be cleared, or be permitted to be cleared pursuant to the clearing agency's rules, and may only be sold to eligible contract participants.

As we noted in the discussion of Securities Act Rule 239, we believe the

[69] *See* FSR/ISDA/SIFMA Letter; Gibson Dunn Letter; GFI Letter; and CIR Letter.

[70] *See* GFI Letter; and FSR/ISDA/SIFMA Letter.

[71] *See* GFI Letter.

[72] *See* FSR/ISDA/SIFMA Letter. This commentator stated its view that investors in security-based swaps are primarily concerned with the referenced security or loan, issuer or narrow-based security index, and not the counterparty that is issuing the swap and that requiring an eligible contract participant to register a class of security-based swaps would be burdensome and would not provide any meaningful or useful information about the security-based swaps This commentator stated its view that the ongoing periodic reporting requirements and proxy rules, among other requirements, that are triggered by registration under the Exchange Act would not make sense to apply in the context of security-based swaps. *Id.*

[73] *See* Proposing Release at 30; and Interim SBS Exemptions Release at 16.

[74] *Id.*

[75] *See* footnote 41 above for a discussion of comments received on the Interim SBS Exemptions Release.

[76] 15 U.S.C. 78l(g) and Exchange Act Rule 12g–1 [17 CFR 240.12g–1].

[77] 15 U.S.C. 78l(a).

[78] 15 U.S.C. 78l(g).

[79] Exchange Act Rules 12h–1(d) and 12h–1(e) provide similar exemptions for options and futures, respectively. See 17 CFR 240.12h–1(d) and (e).

interest of investors in the security-based swap is primarily with respect to the referenced security or loan, referenced issuer or referenced narrow-based security index, and not with respect to the registered or exempt clearing agency functioning as the CCP.[80] Therefore, we believe that requiring registration of security-based swaps under the Exchange Act would not provide additional useful information or meaningful protection to investors with respect to the security-based swap. In addition, the other consequences of Exchange Act registration, such as requirements for ongoing periodic reporting and application of the proxy rules to the clearing agency, would not be meaningful in the context of security-based swaps. At the same time, requiring such registration likely would impose burdens on clearing agencies issuing security-based swaps.[81] Therefore, based on the discussion above, we believe that exempting the registered or exempt clearing agency from the requirements of the Exchange Act arising from Section 12(a) or 12(g) is necessary or appropriate in the public interest and is not inconsistent with the public interest or the protection of investors.

In addition, we note that similar Exchange Act exemptions exist for standardized options issued by a registered options clearing agency and security futures products issued by a registered or exempt clearing agency.[82] We believe that it is appropriate to establish comparable regulatory treatment for security-based swaps issued by a registered or exempt clearing agency with respect to the applicability of Section 12 of the Exchange Act to security-based swaps issued by a registered or exempt clearing agency. Moreover, we believe it is important to further the goal of facilitating clearing of security-based swaps while maintaining appropriate investor protection.

Consistent with the proposal, security-based swaps that will not be cleared by a registered or exempt clearing agency in its function as a CCP but are listed for trading on a national securities exchange or registered or exempt security-based SEF will not be able to rely on these exemptions from registration under Section 12(b) or Section 12(g) of the Exchange Act.[83]

C. Exemption From the Trust Indenture Act—Trust Indenture Act Rule 4d–11

1. Proposed Rule

We proposed Rule 4d–11 under Section 304(d) of the Trust Indenture Act that would exempt any security-based swap offered and sold in reliance on Securities Act Rule 239 from having to comply with the provisions of the Trust Indenture Act.

2. Comments

Commentators generally supported the proposed rule.[84] We received only two specific comments on the proposed rule.[85] Consistent with the comments noted above, these commentators suggested that the Commission provide an exemption under the Trust Indenture Act similar to the proposed rule for certain uncleared security-based swap transactions involving eligible contract participants.[86] As noted above, these commentators' suggestions related to exemptions affecting transactions that do not involve registered or exempt clearing agencies and appear responsive to the request for whether additional exemptions should be considered. Thus, we believe that these commentators' suggestions relating to uncleared security-based swaps are more appropriate to be considered in connection with the Interim SBS Exemptions Release and, therefore, we are not adopting rules at this time providing exemptions that would apply to uncleared security-based swaps, including those that may be effected on or through trading platforms.[87]

3. Final Rule

We are adopting Rule 4d–11 under Section 304(d) of the Trust Indenture Act without any changes from the proposal. Final Rule 4d–11 exempts any security-based swap offered and sold in reliance on Securities Act Rule 239 from having to comply with the provisions of the Trust Indenture Act.[88] We adopted a similar exemption on a temporary basis for eligible CDS.[89]

The Trust Indenture Act is aimed at addressing problems that unregulated debt offerings pose for investors and the public,[90] and provides a mechanism for debtholders to protect and enforce their rights with respect to the debt. We do not believe that the protections contained in the Trust Indenture Act are needed to protect eligible contract participants to whom a sale of a security-based swap is made in reliance on Securities Act Rule 239. The identified problems that the Trust Indenture Act is intended to address generally do not occur in the offer and sale of security-based swaps.[91] For example, security-based swaps are contracts between two parties and, as a result, do not raise the same problem regarding the ability of parties to enforce their rights under the instruments as would, for example, a debt offering to the public. Moreover, through novation, the clearing agency functionally becomes the counterparty to the buyer and the seller, and, in the case where

[80] As noted above, a member or other user of the clearing agency may have an interest in the financial condition of the clearinghouse.

[81] *See* Public Law 111–203 § 763(b).

[82] *See* Exchange Act Section 12(a) [15 U.S.C. 78l(a)]; Exchange Act Rule 12a–9 [17 CFR 240.12a–9]; and Exchange Act Rules 12h–1(d) and (e) [17 CFR 240.12h–1(d) and (e)].

[83] We recognize that security-based swaps that will be issued by a clearing agency, as well as security-based swaps that will not be cleared, may be traded on or through a national securities exchange or a security-based SEF. If the national securities exchange or security-based SEF is acting only in its capacity as a system or platform for trading securities, we do not believe it would be offering or selling the security-based swaps that are being traded or transacted by market participants on or through its system or platform, for purposes of either the Securities Act or the Exchange Act registration provisions applicable to security-based swaps. If the security-based swap being traded on or through the national securities exchange or security-based SEF will, by its terms, be cleared by a clearing agency in its function as a CCP, the security-based swap will be issued by such clearing agency, similar to standardized options and security-future products that are traded on national securities exchanges and cleared by registered clearing agencies. For a security-based swap that will not, by its terms, be cleared by a clearing agency in its function as a CCP, market participants must evaluate the availability of exemptions under the Securities Act and the Exchange Act for their security-based swap transactions.

[84] *See* FSR/ISDA/SIFMA Letter; Gibson Dunn Letter; GFI Letter; and CIR Letter.

[85] *See* GFI Letter; and FSR/ISDA/SIFMA Letter.

[86] *Id.* One of these commentators stated its view that because a security-based swap is a contract between two persons, security-based swap counterparties would not meaningfully benefit from the substantive and procedural protections of the Trust Indenture Act. This commentator also stated its view that eligible contract participants are capable of enforcing obligations under security-based swaps without the protections of the Trust Indenture Act and, therefore, that imposing the requirements of the Trust Indenture Act on security-based swaps would not further the goals of the Trust Indenture Act and would introduce unnecessary costs and burdens to these transactions. *See* FSR/ISDA/SIFMA Letter.

[87] *See* footnote 41 above for a discussion of comments received on the Interim SBS Exemptions Release.

[88] The Trust Indenture Act applies to debt securities sold through the use of the mails or interstate commerce. Section 304 of the Trust Indenture Act exempts from the Trust Indenture Act a number of securities and transactions. Section 304(a) of the Trust Indenture Act exempts securities that are exempt under Securities Act Section 3(a) but does not exempt from the Trust Indenture Act securities that are exempt by Commission rule. Accordingly, while Securities Act Rule 239 exempts the offer and sale of security-based swaps satisfying certain conditions from all the provisions of the Securities Act (other than Section 17(a)), the Trust Indenture Act would continue to apply absent Rule 4d–11.

[89] *See* Rule 4d–11T [17 CFR 260.4d–11T]. *See also* footnote 29 above.

[90] *See* 15 U.S.C. 77bbb(a).

[91] 15 U.S.C. 77bbb(a).

buyer and seller are both members of the CCP, each would look directly to the clearing agency to satisfy the obligations under the security-based swap. As a consequence, enforcement of contractual rights and obligations under the security-based swap would occur directly between such parties, and the Trust Indenture Act provisions would not provide any additional meaningful substantive or procedural protections.

Accordingly, due to the nature of security-based swaps as contracts that will be or have been issued by a registered or exempt clearing agency in its function as a CCP, we do not believe the protections contained in the Trust Indenture Act are needed with respect to these instruments. Therefore, we believe the exemption is necessary or appropriate in the public interest, consistent with the protection of investors and the purposes fairly intended by the Trust Indenture Act.

D. Implications of Security-Based Swaps as Securities

The exemptions we are adopting in this release are not available for security-based swaps that are not cleared (''uncleared security-based swaps''), including, for example, uncleared security-based swaps entered into on organized markets, such as a security-based SEF or a national securities exchange. It is our understanding that transactions involving uncleared security-based swaps entered into between eligible contract participants may occur today on organized platforms that would likely register as security-based SEFs, and we understand that this activity will likely continue after the full implementation of Title VII.[92] As noted above, security-based swaps are included in the definition of security under the Securities Act and the Exchange Act and are subject to the full panoply of the federal securities laws, including the registration requirements of Section 5 of the Securities Act and Section 12 of the Exchange Act. Because the exemptions we are adopting in this release are not available with respect to uncleared security-based swaps, counterparties that are eligible contract participants and engaging in an uncleared security-based swap would have to either rely on other available exemptions from the registration requirements of the Securities Act, the Exchange Act, and, if applicable, the Trust Indenture Act, or consider whether to register such transaction and/or class of security.[93]

Further, as noted above, security-based swap transactions involving persons that are not eligible contract participants, whether the transaction is cleared or not cleared, must be registered under the Securities Act and effected on a national securities exchange.[94] One commentator suggested that the Commission adopt a simplified disclosure and registration scheme for those security-based swaps transactions that may involve persons who are not eligible contract participants.[95] As the commentator's suggestions are outside the scope of the proposed rules, we are not considering the suggestions as part of this rulemaking. In the future, we may evaluate the need for a simplified disclosure and registration scheme for security-based swaps that may be offered and sold to persons who are not eligible contract participants.

E. Expiration of Temporary Exemptions for Eligible CDS

As noted above, we adopted the temporary exemptions for eligible CDS to facilitate the operation of clearing agencies functioning as CCPs for eligible CDS. Those exemptions expire on April 16, 2012. The exemptions we are adopting in this release cover all security-based swaps that may be cleared, including eligible CDS that currently are being issued in reliance on the temporary exemptions for eligible CDS. Clearing agencies that have been actively engaged as CCPs in clearing eligible CDS transactions in reliance on the temporary exemptions for eligible CDS will be required to comply with the conditions of the exemptions we are adopting in this release upon the effective date of the final rules.

III. Certain Administrative Law Matters

The final rules will become effective on April 16, 2012. The Administrative Procedure Act generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[96] This requirement, however, does not apply if a substantive rule grants or recognizes an exemption or relieves a restriction or if the Commission finds good cause not to delay the effective date.[97] The Commission finds that the final rules meet both criteria.

The final rules provide exemptions under the Securities Act, the Exchange Act and the Trust Indenture Act for security-based swaps issued by a registered or exempt clearing agency in its function as a CCP. In addition, as discussed above, we adopted the temporary exemptions for eligible CDS to facilitate the operation of clearing agencies as CCPs for eligible CDS. The exemptions we are adopting in this release cover all security-based swaps that may be cleared, including eligible CDS that currently are being issued in reliance on the temporary exemptions for eligible CDS. Given that the temporary exemptions for eligible CDS will expire on April 16, 2012, the final rules are needed to be effective by that date in order to continue facilitating the operation of CCPs in clearing eligible CDS.

Although the final rules condition the exemptions on the registered or exempt clearing agency disclosing certain information with respect to the security-based swaps it clears, we believe that providing this information will not pose significant transition burdens for the three clearing agencies that have been actively engaged as CCPs in clearing eligible CDS in reliance on the temporary exemptions for eligible CDS, which expire on April 16, 2012.[98] As noted above, these three clearing agencies are deemed registered as clearing agencies for purposes of clearing security-based swaps and are able to engage as CCPs in clearing eligible CDS, in part, pursuant to the temporary exemptive order relating to Sections 5 and 6 of the Exchange Act.[99] The temporary exemptive order contains the conditions relating to, among other things, available information about the eligible CDS and the underlying reference entity of such eligible CDS. Since these clearing agencies have been required to comply with these conditions, they should have the information readily available regarding the eligible CDS that they would need to comply with the conditions of the final rules we are adopting in this release. The final rules provide that these clearing agencies either make the information publicly

[92] *See* Security-Based SEF Proposing Release (proposed rules relating to security-based SEFs would allow for transactions in uncleared security-based swaps to occur on registered security-based SEFs).

[93] Counterparties engaging in an uncleared security-based swap may rely upon the relief discussed in footnote 33 above, which is not affected by this rulemaking. However, such relief will expire upon the compliance date for the final rules the Commission may adopt further defining both the terms ''security-based swap'' and ''eligible contract participant.''

[94] *See* footnote 64 above and accompanying text.

[95] *See* Gibson Dunn Letter.

[96] *See* 5 U.S.C. 553(d).

[97] *See* 5 U.S.C. 553(d)(1) and (3).

[98] Only the three clearing agencies that have been actively engaged as CCPs in clearing eligible CDS in reliance on the temporary exemptions for eligible CDS will initially be eligible to rely upon the exemptions contained in the final rules because the clearing agency rules currently only cover certain eligible CDS.

[99] *See* footnote 30 above.

available on the clearing agency's Web site or in an agreement the clearing agency provides or makes available to its counterparty to the security-based swap transaction. As discussed below, we estimate that each clearing agency will spend approximately 2 hours in order to comply with this information disclosure requirement.[100]

IV. Economic Analysis

As discussed above, we are adopting rules and amendments to existing rules to provide certain exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act for security-based swaps issued by a registered or exempt clearing agency in its function as a CCP. The final rules, which have not been changed from the proposal, exempt security-based swaps that are or will be issued to eligible contract participants by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Exchange Act Section 12 and the provisions of the Trust Indenture Act.

We requested comment on the economic analysis included in the Proposing Release, but we did not receive any comments.

The final rules are intended to further the goal of central clearing of security-based swaps by providing exemptions for the issuance of security-based swaps by a registered or exempt clearing agency in its function as a CCP from certain regulatory provisions that might otherwise impair their ability to engage in such clearing activities. Without an exemption, (1) a security-based swap transaction involving a registered or exempt clearing agency functioning as a CCP would have to be registered under the Securities Act; (2) the security-based swaps that are or have been issued in a transaction involving a registered or exempt clearing agency functioning as a CCP would have to be registered as a class of securities under the Exchange Act; and (3) the provisions of the Trust Indenture Act would apply. We believe that requiring compliance with these provisions likely would unnecessarily impede central clearing of security-based swaps and that the exemptions are necessary to facilitate the intent of the Dodd-Frank Act with respect to mandatory clearing of security-based swaps. Absent these exemptions, we believe that registered or exempt clearing agencies would incur additional costs due to compliance with the registration requirements of the Securities Act and the Exchange Act solely because of their clearing functions.[101]

The final rules should facilitate clearing of security-based swaps by clearing agencies functioning as CCPs at minimal cost to the CCP. Because reliance on the exemptions will not require any filing with or submission to us, other than costs incurred to comply with the information condition of Securities Act Rule 239, the costs of being able to rely on such exemptions, we believe, are minimal.

The exemptions would treat security-based swaps issued or cleared by a registered or exempt clearing agency in its function as a CCP in the same manner as similar types of securities, such as security futures products and standardized options.[102] The exemptions are similar to the temporary exemptions for eligible CDS. A registered or exempt clearing agency issuing security-based swaps in its function as a CCP would benefit from the exemptions because it would not have to file registration statements covering the offer and sale of the security-based swaps. If a registered or exempt clearing agency is not required to register the offer and sale of security-based swaps, it would not have to incur the costs of such registration, including legal and accounting costs. Some of these costs, such as the costs of obtaining audited financial statements, may still be incurred by the clearing agency as a result of other regulatory requirements for clearing agencies.

Exchange Act Rule 12a–10 provides that the Exchange Act Section 12(a) does not apply to any security-based swap that is issued by a registered or exempt clearing agency in reliance on Securities Act Rule 239 and traded on a national securities exchange. In addition, Exchange Act Rule 12h–1(h) exempts from Exchange Act Section 12(g) security-based swaps that are issued by a registered or exempt clearing agency in reliance on Securities Act Rule 239, whether or not such security-based swap is traded on a national securities exchange or a registered or exempt security-based SEF. Thus, the clearing agency will not incur the costs of registration or the costs associated with Exchange Act periodic reporting. The availability of exemptions under the Securities Act, the Exchange Act, and the Trust Indenture Act means that registered or exempt clearing agencies will not incur the costs associated with registering transactions or classes of securities, such as costs associated with preparing documents describing security-based swaps, preparing indentures, or arranging for the services of a trustee.

The final rules we are adopting exempt offers and sales of security-based swaps that are or will be issued to eligible contract participants by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP from all provisions of the Securities Act, other than the Section 17(a) antifraud provision, as well as from the registration requirements under Section 12 of the Exchange Act and the provisions of the Trust Indenture Act.[103] Because these exemptions are available to any registered or exempt clearing agency offering and selling security-based swaps to an eligible contract participant, in its function as a CCP, we do not believe that the exemptions impose a burden on competition. In contrast, we believe the exemptions as adopted will facilitate moving security-based swaps into centralized clearing, furthering the goal of the Dodd-Frank Act to reduce systemic risk while improving market access to hedging instruments that can contribute to lower costs of raising capital. In addition, we believe the exemptions will promote efficiency by treating security-based swaps issued by clearing agencies in a manner similar to standardized options and security futures issued by clearing agencies. Harmonizing the regulatory treatment of these securities under the Securities Act, Exchange Act, and the Trust Indenture Act should reduce the potential for regulatory arbitrage between such products.

We also believe that the ability to novate security-based swaps with registered or exempt clearing agencies functioning as CCPs will improve the transparency of the security-based swap market and provide greater assurance to

[100] *See* discussion in Section V.C. below.

[101] *See, e.g.,* the discussion in the Mandatory Clearing Proposing Release and the Clearing Agencies Proposing Release.

[102] *See, e.g.,* Securities Act Section 3(a)(14) [15 U.S.C. 77c(a)(14)]; Securities Act Rule 238 [17 CFR 230.238]; Exchange Act Section 12(a) [15 U.S.C. 78*l*]; and Exchange Act Rules 12h–1(d) and (e) [17 CFR 240.12h–1(d) and (e)].

[103] Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. 15 U.S.C. 78w(a)(2). Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. In addition, Section 2(b) of the Securities Act and Section 3(f) of the Exchange Act require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to also consider whether the action will promote efficiency, competition, and capital formation. 15 U.S.C. 77b(b) and 15 U.S.C. 78c(f).

participants as to the capacity of the counterparty to perform its obligations under the security-based swap. We believe that clearing agencies providing the information required by Securities Act Rule 239(b)(3) may provide transparency among clearing agencies because it will make it easier for clearing agencies and eligible contract participants to determine what security-based swaps are being cleared. We believe that increased transparency in the security-based swap market could help to limit market turmoil and thereby facilitate the capital formation process.

We recognize that a consequence of the exemptions would be the unavailability of certain remedies under the Securities Act and the Exchange Act and certain protections under the Trust Indenture Act. Absent an exemption, a clearing agency may have to file a registration statement covering the offer and sale of the security-based swaps, may have to register the class of eligible security-based swaps that it has issued or cleared under the Exchange Act, and may have to satisfy the applicable provisions of the Trust Indenture Act, which would provide investors with civil remedies in addition to antifraud remedies. A registration statement covering the offer and sale of security-based swaps may provide certain information about the clearing agency, security-based swap contract terms, and the identification of the particular reference securities, issuers, and loans underlying the security-based swap. However, it would not necessarily provide the type of information necessary to assess the risk of the reference issuer, security, narrow-based security index, or loan. Further, while a registration statement would provide information to eligible contract participants, as well as to the market as a whole, registered clearing agencies already are required to make their audited financial statements and other information about themselves publicly available.[104] While an investor would be able to pursue an antifraud action in connection with the purchase and sale of security-based swaps under Exchange Act Section 10(b),[105] it would not be able to pursue civil remedies under Securities Act Sections 11 or 12.[106] We could still pursue an antifraud action in the offer and sale of security-based swaps issued by a clearing agency.[107]

Securities Act Rule 239(b)(3) requires a clearing agency availing itself of the Securities Act exemption to include in an agreement covering the security-based swap the clearing agency provides or makes available to its counterparty or include on a publicly available Web site maintained by the clearing agency:

- A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;
- A statement indicating the securities or loans to be delivered (or class of securities or loans), or if cash settled, the securities, loans or narrow-based security index (or class of securities or loans) whose value will determine the settlement obligation under the security-based swap; and
- A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Exchange Act Section 13 or Section 15(d) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available and where the information is available.

We believe some of the information the clearing agency will make available will be the same information the clearing agency collects and analyzes in making its business decision to plan to accept the security-based swap, or any group, category, type, or class of security-based swaps, for clearing. A clearing agency may incur costs in providing or making available this information in order to rely on the exemption.[108]

V. Paperwork Reduction Act

A. Background

Certain provisions of Securities Act Rule 239 would result in ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[109] We published a notice requesting comment on the collection of information requirements in the Proposing Release for Securities Act Rule 239 and we submitted these requirements to the Office of Management and Budget (''OMB'') for review in accordance with the PRA. We requested comment on the collection of information requirements included in the Proposing Release for Securities Act Rule 239, but we did not receive any comments.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The title for this collection of information is:

- ''Rule 239'' (new collection of information).

Rule 239 is a new collection of information under the Securities Act. This new collection of information relates to the information requirements for clearing agencies seeking to rely on the final rules. There is no mandatory retention period for the information disclosed, and the information disclosed will be made publicly available on the clearing agency's Web site or in an agreement the clearing agency provides or makes available to its counterparty to the security-based swap transaction. The collection of information is mandatory and it will not be kept confidential.

B. Summary of Collection of Information

As discussed above, one condition to the availability of the exemption provided in Securities Act Rule 239 for offers and sales of security-based swaps issued by, and in a transaction involving, a registered or exempt clearing agency in its function as a CCP is that such registered or exempt clearing agency has an agreement covering the security-based swap that is provided or made available to its counterparty or a publicly available Web site maintained by the registered or exempt clearing agency that contains the following:

- A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;
- A statement indicating the security or loan to be delivered (or class of securities or loans), or if cash settled, the security, loan or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and
- A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of

[104] *See Regulation of Clearing Agencies,* Release No. 34–16900 (Jun. 17. 1980), 45 FR 41920 (Jun. 23, 1980); and Exchange Act Rule 19b–4(l) and (m) [17 CFR 240.19b–4(l) and (m)].

[105] 15 U.S.C. 78j(b).

[106] 15 U.S.C. 77k and 77l.

[107] *See* 15 U.S.C. 77q and 15 U.S.C. 78j(b).

[108] We estimate that the total annual reporting burden for clearing agencies to provide the information in their agreements relating to security-based swaps or on their Web site to comply with Securities Act Rule 239(b)(3) will be 240 hours. We also estimate that 75% of the burden of preparation is carried by the clearing agency internally and that 25% of the burden is carried by outside professionals retained by the clearing agency at an average cost of $400 per hour. See discussion in Section V.C. below.

[109] 44 U.S.C. 3501 *et seq.*

Exchange Act Section 13 or Section 15(d) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available and where the information is available.

C. Paperwork Reduction Act Burden Estimates

For purposes of the PRA, we estimate that there will be an annual incremental increase in the paperwork burden for clearing agencies as issuers of security-based swaps to comply with our new collection of information requirements. The disclosure provisions of Securities Act Rule 239 apply to registered or exempt clearing agencies relying on the exemption from the registration requirements of the Securities Act. These disclosure provisions will require those relying on the exemption to make certain information about security-based swaps that may be cleared by the registered or exempt clearing agency available to eligible contract participants and other market participants. This estimate is consistent with the estimate in the Proposing Release and we received no comments on this estimate.

Currently, three clearing agencies clear eligible CDS, which include security-based swaps.[110] The obligation to centrally clear certain security-based swap transactions is a new requirement under Title VII of the Dodd-Frank Act, and clearing agencies that are deemed registered as clearing agencies are eligible to clear security-based swaps. Based on the fact that there are currently three clearing agencies authorized to clear security-based swaps and that there could conceivably be a few more in the foreseeable future,[111] we estimate that three to six clearing agencies may plan to centrally clear security-based swaps and seek to rely on the exemptions we are adopting in this release, and therefore, would be subject to the collection of information.[112] For purposes of the PRA, we estimate six clearing agencies would seek to rely on the exemptions we are adopting in this release. This estimate is consistent with the estimate in the Proposing Release and we received no comments on this estimate.

We believe that a registered or exempt clearing agency issuing security-based swaps in its function as a CCP could incur some costs associated with disclosing, or providing or making available, certain information in accordance with Securities Act Rule 239, either in its agreement regarding the security-based swap or on its publicly available Web site, with respect to the security-based swap. A clearing agency also could incur costs associated with updating the information on its Web site or in its agreements, if necessary. The purpose of the requirement is to inform investors about whether there is publicly available information about the issuer of the referenced security or referenced issuer and we believe that a clearing agency likely already would be collecting and making public the type of information required by the final rule.[113]

We estimate that each registered or exempt clearing agency issuing security-based swaps in its function as a CCP will spend approximately 2 hours each time it provides or updates the information in its agreements relating to security-based swaps or on its Web site.[114] We estimate that each registered or exempt clearing agency will provide or update the information 20 times per year.[115] Therefore, we estimate that the total annual reporting burden for clearing agencies to provide the information in their agreements relating to security-based swaps or on their Web site to comply with Securities Act Rule 239(b)(3) will be 240 hours (20×2 hours $\times 6$ respondents). We estimate that 75% of the burden of preparation is carried by the clearing agency internally and that 25% of the burden is carried by outside professionals retained by the clearing agency at an average cost of $400 per hour. These estimates are consistent with the estimates in the Proposing Release and we received no comments on these estimates.

D. Recordkeeping Requirements

There is no recordkeeping requirement associated with Securities Act Rule 239.

VI. Regulatory Flexibility Act Certification

Under Section 605(b) of the Regulatory Flexibility Act,[116] we certified that, when adopted, Rule 239 under the Securities Act, Rule 12a–10 under the Exchange Act, the amendment to Rule 12h–1 under the Exchange Act, and Rule 4d–11 under the Trust Indenture Act would not have a significant economic impact on a substantial number of small entities. This certification, including our basis for the certification, was included in Part VIII of the Proposing Release. We solicited comments on the potential impact of these rules and amendment on small entities, but received none. The final rules are identical to the proposed rules. Accordingly, there have been no changes to the proposal that would alter the basis upon which the certification was made.

VII. Statutory Authority and Text of the Rules and Amendments

The rules and amendments described in this release are being adopted under the authority set forth in Sections 19 and 28 of the Securities Act, Sections 3C, 12(h), 23(a) and 36 of the Exchange

[110] These clearing agencies are ICE Clear Credit LLC (f/k/a ICE U.S. Trust LLC), ICE Clear Europe, Ltd., and the Chicago Mercantile Exchange Inc. *See* footnote 30 above.

[111] We do not expect there to be a large number of clearing agencies that clear security-based swaps, based on the significant level of capital and other financial resources necessary for the formation of a clearing agency.

[112] In the Proposing Release, we estimated that four to six clearing agencies may plan to centrally clear security-based swaps and seek to rely on the exemptions because at that time four clearing agencies were authorized to clear eligible CDS pursuant to certain temporary exemptive orders. *See* footnote 28 above. However, subsequent to the Proposing Release, three of these clearing agencies were deemed registered under Exchange Act Section 17A and currently are performing the functions of a CCP for eligible CDS. The fourth clearing agency was not deemed registered under Exchange Act Section 17A and because its temporary exemptive order has expired it is not currently performing the functions of a CCP for eligible CDS. *See* footnote 30 above.

[113] As noted above, three clearing agencies are deemed registered as clearing agencies for purposes of clearing security-based swaps and are able to engage as CCPs in clearing eligible CDS, in part, pursuant to the temporary exemptive order relating to Sections 5 and 6 of the Exchange Act. The temporary exemptive order contains conditions to such relief relating to, among other things, available information about the eligible CDS and the underlying reference entity of such eligible CDS. See footnote 30 above. We also note that we proposed rules in the Mandatory Clearing Proposing Release and the SBSR Proposing Release that would require some of the same information as the requirements adopted in this release. If we adopt those rules with information collections similar to that adopted in this release, we may adjust our PRA estimates.

[114] In the Mandatory Clearing Proposing Release, we estimated that four hours would be required by a clearing agency to post a security-based swap submission on its Web site to comply with proposed Rule 19b–4(o)(5). We believe that the information that would be required to rely on the exemptions we are adopting in this release is less extensive than the information that would be required in a security-based swap submission. Therefore, we estimate that the burden to include the information that would be required to rely on the exemptions in an agreement or on the clearing agency's Web site would be less than the burden to post a security-based swap submission.

[115] In the Mandatory Clearing Proposing Release, we estimated that each clearing agency will submit 20 security-based swap submissions annually. Each submission will relate to a security-based swap, or group, category, type or class of security-based swap that the clearing agency plans to accept for clearing. We are using that estimate as the basis for our estimate as to how many times per year a clearing agency would be required to provide the information in reliance on the exemptions.

[116] 5 U.S.C. 605(b).

Act and Section 304(d) of the Trust Indenture Act.

List of Subjects in 17 CFR Parts 230, 240 and 260

Reporting and recordkeeping requirements, Securities.

Text of the Rules and Amendments

For the reasons set out in the preamble, the Commission is amending Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l,* 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Section 230.239 is added to read as follows:

§ 230.239 Exemption for offers and sales of certain security-based swaps.

(a) Provided that the conditions of paragraph (b) of this section are satisfied and except as expressly provided in paragraph (c) of this section, the Act does not apply to any offer or sale of a security-based swap that:

(1) Is issued or will be issued by a clearing agency that is either registered as a clearing agency under Section 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1) or exempt from registration under Section 17A of the Securities Exchange Act of 1934 pursuant to a rule, regulation, or order of the Commission (''eligible clearing agency''), and

(2) The Commission has determined is required to be cleared or that is permitted to be cleared pursuant to the eligible clearing agency's rules.

(b) The exemption provided in paragraph (a) of this section applies only to an offer or sale of a security-based swap described in paragraph (a) of this section if the following conditions are satisfied:

(1) The security-based swap is offered or sold in a transaction involving the eligible clearing agency in its function as a central counterparty with respect to such security-based swap;

(2) The security-based swap is sold only to an eligible contract participant (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))); and

(3) The eligible clearing agency posts on its publicly available Web site at a specified Internet address or includes in its agreement covering the security-based swap that the eligible clearing agency provides or makes available to its counterparty the following:

(i) A statement identifying any security, issuer, loan, or narrow-based security index underlying the security-based swap;

(ii) A statement indicating the security or loan to be delivered (or class of securities or loans), or if cash settled, the security, loan, or narrow-based security index (or class of securities or loans) whose value is to be used to determine the amount of the settlement obligation under the security-based swap; and

(iii) A statement of whether the issuer of any security or loan, each issuer of a security in a narrow-based security index, or each referenced issuer underlying the security-based swap is subject to the reporting requirements of Sections 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m and 78o) and, if not subject to such reporting requirements, whether public information, including financial information, about any such issuer is available and where the information is available.

(c) The exemption provided in paragraph (a) of this section does not apply to the provisions of Section 17(a) of the Act (15 U.S.C. 77q(a)).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.,* 18 U.S.C. 1350, 12 U.S.C. 5221(e)(3), and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 4. Section 240.12a–10 is added to read as follows:

§ 240.12a–10 Exemption of security-based swaps from section 12(a) of the Act.

The provisions of Section 12(a) of the Act (15 U.S.C. 78l(a)) do not apply to any security-based swap that:

(a) Is issued or will be issued by a clearing agency registered as a clearing agency under Section 17A of the Act (15 U.S.C. 78q–1) or exempt from registration under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission, in its function as a central counterparty with respect to the security-based swap;

(b) The Commission has determined is required to be cleared or that is permitted to be cleared pursuant to the clearing agency's rules;

(c) Is sold to an eligible contract participant (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) in reliance on Rule 239 under the Securities Act of 1933 (17 CFR 230.239); and

(d) Is traded on a national securities exchange registered pursuant to Section 6(a) of the Act (15 U.S.C. 78f(a)).

■ 5. Section 240.12h–1 is amended by adding paragraph (h) to read as follows:

§ 240.12h–1 Exemptions from registration under section 12(g) of the Act.

* * * * *

(h) Any security-based swap that is issued by a clearing agency registered as a clearing agency under Section 17A of the Act (15 U.S.C. 78q–1) or exempt from registration under Section 17A of the Act pursuant to a rule, regulation, or order of the Commission in its function as a central counterparty that the Commission has determined must be cleared or that is permitted to be cleared pursuant to the clearing agency's rules, and that was sold to an eligible contract participant (as defined in Section 1a(18) of the Commodity Exchange Act (7 U.S.C. 1a(18))) in reliance on Rule 239 under the Securities Act of 1933 (17 CFR 230.239).

* * * * *

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

■ 6. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

* * * * *

■ 7. Section 260.4d–11 is added to read as follows:

§ 260.4d–11 Exemption for security-based swaps offered and sold in reliance on Rule 239 under the Securities Act of 1933 (17 CFR 230.239).

Any security-based swap offered and sold in reliance on Rule 239 under the Securities Act of 1933 (17 CFR 230.239), whether or not issued under an indenture, is exempt from the Act.

Dated: March 30, 2012.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2012–8141 Filed 4–4–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1340

[Docket No. NHTSA–2010–0002]

RIN 2127–AL23

Uniform Criteria for State Observational Surveys of Seat Belt Use

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the implementation date for use of the revised uniform criteria for State Observational Surveys of Seat Belt Use. With this change, States may continue in calendar year 2012 to use a survey design that was approved under the old uniform criteria or, at their election, use a survey design approved under the revised uniform criteria. In calendar year 2013, all States must use a survey design approved under the revised uniform criteria.

DATES: This final rule is effective April 5, 2012.

FOR FURTHER INFORMATION CONTACT: Ms. Jin Kim, Attorney-Advisor, Office of the Chief Counsel, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., NCC–113, Washington, DC 20590. Telephone number: 202–366–1834; Email: *Jin.Kim@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On April 1, 2011, the National Highway Traffic Safety Administration (NHTSA) published a final rule setting forth ''Uniform Criteria for State Observational Surveys of Seat Belt Use.'' 76 FR 18042. That final rule amended the regulation establishing uniform criteria for designing and conducting State observational surveys of seat belt use and the procedures for obtaining NHTSA approval of survey designs, and provided a new form for reporting seat belt use rates to NHTSA.

The final rule specified that beginning with calendar year 2012 surveys, States must use survey designs that have been approved by NHTSA as conforming to the revised uniform criteria. Under the rule, States were required to submit proposed survey designs by January 3, 2012. Almost all States met this deadline. However, in reviewing the proposed survey designs, NHTSA found it necessary to seek clarification from States, in some cases several times. Due to the unanticipated complexity of the review process, only a few States have survey designs that have been approved at this time by NHTSA.

Most States conduct seat belt use surveys in May and June, during the time of the nationally-supported seat belt enforcement mobilization. NHTSA does not believe that proposed survey designs will be approved in time for all States to train data collectors and conduct seat belt use surveys in May and June of 2012. For this reason, NHTSA is amending the final rule to allow States to conduct calendar year 2012 seat belt use surveys using designs approved by NHTSA under the old uniform criteria or, at a State's election if its new survey design has been approved, under the revised uniform criteria. Beginning in calendar year 2013, all States must conduct a survey whose design satisfies and is approved by NHTSA under the revised uniform criteria.

II. Rulemaking Analyses and Notices

The Administrative Procedure Act (APA) authorizes agencies to dispense with certain notice procedures for rules when they find ''good cause'' to do so. See 5 U.S.C. 553(b)(B). Specifically, the requirements for prior notice and opportunity to comment do not apply when the agency for good cause finds that those procedures are ''impractical, unnecessary, or contrary to the public interest.''

This final rule would amend only the date by which States must conduct seat belt use surveys using the revised uniform criteria. NHTSA already sought public comment on all other aspects of the revised uniform criteria. See 75 FR 4509 (Jan. 28, 2010). The earlier-published final rule reflects the agency's consideration of and response to those comments. See 76 FR 18042 (Apr. 1, 2011).

This amendment would relieve a burden on the States and has no safety impact. While most States met the deadline to submit proposed survey designs under the revised criteria, there has been a need for significant consultation during NHTSA's review of these proposed designs. At this time, only a few States have survey designs that have been approved by NHTSA under the revised uniform criteria. NHTSA does not believe that proposed survey designs will be approved in time for all States to conduct seat belt use surveys during May and June, as is typical practice. Further, notice and comment are ''impractical, unnecessary, or contrary to the public interest'' given this timeline. This final rule would provide States with sufficient notice so that States may elect to collect data in May and June 2012 using either the old uniform criteria or the revised uniform criteria.

The APA provides that rules generally may not take effect earlier than thirty (30) days after they are published in the **Federal Register**. See 5 U.S.C. 553(d). However, section 553(d)(1) provides that a substantive rule which grants or recognizes an exemption or relieves a restriction may take effect earlier. Today's final rule, which relieves a restriction, is effective immediately upon publication.

The agency has discussed the relevant requirements of regulatory analyses and notices in the underlying final rule published at 76 FR 18042 (Apr. 1, 2011). Those discussions are not affected by this amendment.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

III. Regulatory Text

List of Subjects in 23 CFR Part 1340

Grant programs—transportation, Highway safety, Intergovernmental relations, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the National Highway Traffic Safety Administration amends 23 CFR part 1340 as follows:

PART 1340—UNIFORM CRITERIA FOR STATE OBSERVATIONAL SURVEYS OF SEAT BELT USE

■ 1. The authority citation for part 1340 continues to read as follows:

Authority: 23 U.S.C. 402; delegation of authority at 49 CFR 1.50.

■ 2. Section 1340.2 is revised to read as follows:

§ 1340.2 Applicability.

This part applies to State surveys of seat belt use beginning in calendar year 2013 and continuing annually thereafter. However, a State may elect to conduct its calendar year 2012 seat belt use survey using a survey design approved under this part.

Issued on: March 28, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–8137 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–59–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 61

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; DA 12–298]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission clarifies certain rules. The order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order.* The petition for Clarification or, in the Alternative, for Reconsideration of Verizon is granted in part and dismissed in part, and the Petition for Reconsideration of United States Telecom Association is dismissed in part.

DATES: Effective May 7, 2012.

FOR FURTHER INFORMATION CONTACT: Amy Bender, Wireline Competition Bureau, (202) 418–1469, Victoria Goldberg, Wireline Competition Bureau, (202) 418–7353.

SUPPLEMENTARY INFORMATION: This is a summary of the Wireline Competition Bureau's Order in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; DA 12–298, released on February 27, 2012. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0227/DA-12-298A1.pdf.*

I. Introduction

1. In the *USF/ICC Transformation Order,* the Commission delegated to the Wireline Competition Bureau (Bureau) the authority to revise and clarify rules as necessary to ensure that the reforms adopted in the *Order* are properly reflected in the rules. In this Order, the Bureau acts pursuant to this delegated authority to revise and clarify certain rules, and acts pursuant to authority delegated to the Bureau in §§ 0.91, 0.201(d), and 0.291 of the Commission's rules to clarify certain rules.

II. Discussion

A. Intercarrier Compensation

2. In the *USF/ICC Transformation Order,* the Commission adopted a prospective transitional intercarrier compensation framework for VoIP–PSTN traffic. This transitional framework included default compensation rates and addressed a number of implementation issues, including explaining the scope of charges that local exchange carrier (LEC) partners of affiliated or unaffiliated retail VoIP providers are able to include in tariffs. In particular, the Commission determined that it was appropriate to adopt a ''symmetric'' framework for VoIP–PSTN traffic. This symmetric approach means that ''providers that benefit from lower VoIP–PSTN rates when their end-user customers' traffic is terminated to other providers' end-user customers also are restricted to charging the lower VoIP–PSTN rates when other providers' traffic is terminated to their end-user customers.''

3. As part of its symmetric regime, the Commission adopted rules that ''permit a LEC to charge the relevant intercarrier compensation for functions performed by it and/or its retail VoIP partner, regardless of whether the functions performed or the technology used correspond precisely to those used under a traditional TDM architecture.'' The Commission cautioned, however, that ''although access services might functionally be accomplished in different ways depending upon the network technology, the right to charge does not extend to functions not performed by the LEC or its retail VoIP service provider partner.'' The Commission adopted this limitation to address concerns in the record regarding double billing. This limitation was codified as part of the VoIP–PSTN framework in § 51.913(b) of the Commission's rules. The Commission also modified its tariffing rules in Part 61 for competitive LECs to implement the VoIP symmetry rule.

4. On February 3, 2012, YMax Communications Corp. (YMax) filed an *ex parte* letter seeking confirmation of its interpretation that ''under [the Commission's] new VoIP–PSTN 'symmetry' rule, a LEC is performing the functional equivalent of ILEC access service, and therefore entitled to charge the full 'benchmark' rate level, whenever it is providing telephone numbers and some portion of the interconnection with the PSTN, and regardless of how or by whom the last-mile transmission is provided.'' Stated differently, YMax seeks guidance from the Commission as to whether the revised rule language in Part 61, specifically, § 61.26(f) permits a competitive LEC to tariff and charge the full benchmark rate even if it includes functions that neither it nor its VoIP retail partner are actually providing. YMax asserts that the purpose of the Commission's revisions to § 61.26(f) was to ''defin[e] the minimum access functionality necessary in order for a CLEC to be allowed to collect access charges at the full benchmark level under the VoIP–PSTN symmetry rule.'' We disagree. The Commission revised § 61.26(f) to reflect the change in the tariffing process to implement the VoIP symmetry rule, which included limitations to prevent double billing. Interpreting the rule in the manner proposed by YMax could enable double billing. The Commission made clear in adopting the VoIP-symmetry rule that it intended to prevent double billing and charging for functions not actually provided. Indeed, § 51.913(b) expressly states that ''[t]his rule does *not* permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service.''

5. YMax's letter does, however, highlight a potential ambiguity because the amended rule § 61.26(f), which is the tariffing provision intended to implement the VoIP symmetry rule, did not include an express cross reference to § 51.913(b). Although § 51.913(b) makes clear that its terms apply notwithstanding any other Commission rule, to remove any ambiguity regarding the scope of what competitive LECs are permitted to assess in their tariffs, we amend § 61.26(f) to make clear that the ability to charge under the tariff is limited by § 51.913(b). In so doing, we address and reject YMax's interpretation of § 61.26(f).

B. Universal Service

6. *Verizon Petition for Clarification or, in the Alternative, for Reconsideration.* In the *USF/ICC Transformation Order,* the Commission adopted rules to phase down existing high-cost support for competitive eligible telecommunications carriers (ETCs), and addressed the phase down of existing high-cost support to Verizon Wireless and Sprint pursuant to those carriers' prior merger commitments, as clarified by the *Corr Wireless Order.* On December 29, 2011, Verizon Wireless filed a petition for clarification or, in the alternative, for reconsideration of this aspect of the *Order* as it applies to Verizon Wireless. Verizon Wireless argues that there are two permissible interpretations of the *USF/ICC Order* as it bears on the phase down of support for Verizon Wireless: That the general phase down of the competitive ETC support applies but Verizon Wireless's merger commitment no longer does, or that Verizon Wireless's merger commitment remains in effect but general phase down of competitive ETC support does not. Verizon Wireless states that a Bureau-level clarification is the appropriate means of resolving this ambiguity.

7. The Bureau clarifies that, pursuant to paragraph 520 of the *USF/ICC Transformation Order,* only Verizon Wireless's merger commitment applies. Specifically, the Bureau clarifies that Verizon Wireless will receive support in 2012 based on its merger commitments, as clarified by the *Corr Wireless Order,* not based on the general phase down of competitive ETC support described in the *USF/ICC Transformation Order.* Verizon Wireless will not receive high-cost competitive ETC support after 2012. The Universal Service Administrative Company (USAC) shall disburse to Verizon Wireless in 2012 20 percent of the support it would have received for each ETC service area in the absence of its merger commitment and the *USF/ICC Transformation Order.* As a proxy for the amount Verizon Wireless would have received in 2012 in the absence of its merger commitment and the *USF/ICC Transformation Order,* USAC shall use the amount of support it calculated for Verizon Wireless in 2011 pursuant to the identical support rule and the interim cap, including any support not actually disbursed to Verizon Wireless as a result of the merger commitment.

8. Accordingly, the Bureau grants Verizon's Petition to the extent it requests clarification of the phase down of competitive ETC support and dismisses Verizon's Petition to the extent it alternatively requests reconsideration of the same issue.

9. *Other Matters.* First, the Bureau amends the definition of ''rate-of-return carrier'' in § 54.5 of our rules to correct an erroneous cross-reference to the definition of price cap regulation.

10. Second, the Bureau dismisses in part the petition for reconsideration filed by the United States Telecom Association (USTelecom), which, among other things, asked the Commission to clarify that reductions in legacy support resulting from a failure to meet the urban rate floor will, at most, extend only to high-cost loop support and high-cost model support.

11. In the *USF/ICC Clarification Order,* the Bureaus addressed this issue by amending § 54.318(d) to clarify that support reductions associated with the rate floor will offset frozen CAF Phase I support only to the extent that the recipient's frozen CAF Phase I support replaced HCLS and HCMS. The Bureaus further stated that the offset does not apply to frozen CAF Phase I support to the extent that it replaced IAS and ICLS. Because the *USF/ICC Clarification Order* addressed this issue, the Bureau dismisses as moot that portion of the USTelecom petition for reconsideration.

III. Procedural Matters

A. Paperwork Reduction Act

12. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

B. Final Regulatory Flexibility Act Certification

13. *Final Regulatory Flexibility Certification.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

14. This Order clarifies, but does not otherwise modify, the *USF/ICC Transformation Order.* These clarifications do not create any burdens, benefits, or requirements that were not addressed by the Final Regulatory Flexibility Analysis attached to *USF/ICC Transformation Order.* Therefore, we certify that the requirements of this Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Order including a copy of this final certification in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

C. Congressional Review Act

15. The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.

IV. Ordering Clauses

16. Accordingly, *it is ordered,* pursuant to the authority contained in sections 1, 2, 4(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, and 403 of the Communications Act of 1934, as amended, and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 151, 152, 154(i), 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 1302, and pursuant to §§ 0.91, 0.201(d), 0.291, 1.3, and 1.427 of the Commission's rules, 47 CFR 0.91, 0.201(d), 0.291, 1.3, 1.427 and pursuant to the delegation of authority in paragraph 1404 of FCC 11–161 (rel. Nov. 18, 2011), that this Order *is adopted,* effective May 7, 2012.

17. *It is further ordered,* that parts 54 and 61 of the Commission's rules, 47 CFR parts 54, 61 are *amended* as set forth, and such rule amendments shall be effective 30 days after the date of publication of the rule amendments in the **Federal Register**.

18. *It is further ordered* that, pursuant to the authority contained in section 254 of the Communications Act of 1934, as amended, 47 U.S.C. 254, and the authority delegated in §§ 0.91 and 0.291 of the Commission's rules, 47 CFR 0.91, 0.291, the Petition for Clarification or, in the Alternative, for Reconsideration of

Verizon *is granted in part and dismissed in part* and the Petition for Reconsideration of United States Telecom Association *is dismissed in part.*

19. *It is further ordered,* that the Commission *shall send* a copy of this Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

20. *It is further ordered,* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects 47 CFR Parts 54 and 61

Communications common carriers, Reporting and record keeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Sharon E. Gillett,

Chief, Wireline Competition Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 54 and 61 to read as follows:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

■ 2. Amend § 54.5 by revising the definition of ''rate-of-return carrier'' to read as follows.

§ 54.5 Terms and definitions.

* * * * *

Rate-of-return carrier. ''Rate-of-return carrier'' shall refer to any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(ee) of this chapter.

* * * * *

PART 61—TARIFFS

■ 3. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

■ 4. Revise § 61.26(f) to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

* * * * *

(f) If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may, to the extent permitted by § 51.913(b) of this chapter, assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

* * * * *

[FR Doc. 2012–7057 Filed 4–4–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 10–210; DA 12–430]

Relay Services for Deaf-Blind Individuals

AGENCY: Federal Communications Commission.

ACTION: Final rule; waiver of requirement.

SUMMARY: In this document, the Commission conditionally waives the requirement for National Deaf Blind Equipment Distribution Program (NDBEDP) certified programs to submit reimbursement claims only once every six months, to permit certified programs to submit reimbursement claims as frequently as monthly. The Commission waives this requirement for good cause shown, to reduce the financial burden on programs that the Commission certifies to participate in the NDBEDP, and to better enable selected participants to fully meet the needs of eligible low-income, deaf-blind individuals in a timely manner.

DATES: This document is effective May 7, 2012, except the modified reporting requirement in 47 CFR 64.610(f)(2), published at 76 FR 26641, May 9, 2011, has not been approved by the Office of Management and Budget (OMB). The modified information collection requirement shall become effective when the Commission publishes a document in the **Federal Register** announcing OMB approval and the effective date of the requirement.

FOR FURTHER INFORMATION CONTACT: Rosaline Crawford, Consumer and Governmental Affairs Bureau, Disability Rights Office, at (202) 418–2075 or email *Rosaline.Crawford@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document DA 12–430, adopted March 20, 2012, and released March 20, 2012, in CG Docket No. 10–210.

The full text of document DA 12–430 and copies of any subsequently filed documents in this matter will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone: (800) 378–3160, fax: (202) 488–5563, or Internet: *www.bcpiweb.com.* Document DA 12–430 can also be downloaded in Word or Portable Document Format (PDF) at *http://www.fcc.gov/cgb/dro/headlines.html* and at *http://www.fcc.gov/cgb/dro/cvaa.html.*

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

Paperwork Reduction Act of 1995 Analysis

Document DA 12–430 contains a modified information collection requirement. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the modified information collection requirement contained in document DA 12–430 as required by the Paperwork Reduction Act (PRA), Public Law 104–13 in a separate published **Federal Register** Notice (Notice). Public and agency comments are due on or before May 29, 2012. *See* Information Collection Being Reviewed by the Federal Communications Commission, Notice, published at 77 FR 18813, March 28, 2012. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, the Commission previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' *See* 44 U.S.C. 3506(c)(4). In the present document, the Commission has assessed the effects of the rules for the NDBEDP pilot program and finds that the

collection of information requirements will not have a significant impact on small business concerns with fewer than 25 employees.

Congressional Review Act

The Commission will not send a copy of document DA 12–430 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the conditional waiver adopted in document DA 12–430 does not amend the Commission's rules.

Synopsis

1. On April 4, 2011, in accordance with the Twenty-First Century Communications and Video Accessibility Act (CVAA), Public Law 111–260, 124 Stat. 2751 (2010), the Commission adopted a Report and Order establishing the National Deaf-Blind Equipment Distribution Program (NDBEDP). *See Relay Services for Deaf-Blind Individuals,* Report and Order, document FCC 11–56, published at 76 FR 26641, May 9, 2011 (*NDBEDP Pilot Program Order*). The goal of the NDBEDP is to ensure that low-income individuals who are deaf-blind receive the equipment they need to effectively access telecommunications services, Internet access services, and advanced communications services. The CVAA authorizes the Commission to allocate up to $10 million annually from the Interstate Telecommunications Relay Services Fund (TRS Fund) for this nationwide equipment distribution effort. *See* 47 U.S.C. 620(c). The Commission will certify and provide funding to one entity in each state for the purpose of distributing communications equipment to low-income individuals who are deaf-blind.

2. NDBEDP certified programs may seek reimbursement of costs from the TRS Fund up to the funding allocation for the state, for the equipment they distribute, the reasonable costs of providing related services, and the costs associated with administering these programs. In the *NDBEDP Pilot Program Order,* the Commission adopted a funding mechanism that allows for reimbursement for these authorized costs every six months. *See* 47 CFR 64.610(f)(2) of the Commission's rules. To obtain reimbursement for authorized costs, certified programs must provide the Commission with documentation and a reasonably detailed explanation of the costs actually incurred during the prior six-month period of the funding year.

Frequency of Reimbursement Claims

3. The Commission announced that it would accept applications through November 21, 2011, from programs interested in receiving certification to participate in the NDBEDP pilot program. *See FCC Announces 60-Day Period to Apply for Certification to Participate in the National Deaf-Blind Equipment Distribution Program,* Public Notice, document DA 11–1591, released September 22, 2011. In response, the Commission received 58 applications from entities representing each of the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. All applications are from state or local government agencies or non-profit entities.

4. More than half of the applications received include a request for the Commission to permit claims for reimbursement of NDBEDP expenses more frequently than once every six months. Many of the applicants assert that the inability to receive compensation more frequently than once every six months will compromise significantly their ability to staff their programs, purchase equipment, actively conduct program outreach, and handle other required tasks. Accordingly, they claim that the once every six months reimbursement interval will severely and profoundly limit their ability to serve eligible low-income, deaf-blind individuals in a timely manner. Several applicants also assert that permitting more frequent claims for reimbursement is necessary to maintain financial stability and to ensure timely payments to vendors and contractors. Still others raise questions about their ability to participate in the NDBEDP program at all if not permitted to receive compensation on a more frequent basis, especially given their non-profit status, the sizeable expenditures they must incur for covered equipment, and recent budget reductions experienced by state and local government agencies that make reliance on regular funding critical to their participation in this program.

5. Generally, the Commission may waive any provision of its rules on its own motion for good cause shown. *See* 47 CFR 1.3 of the Commission's rules. In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis. *WAIT Radio* v. *FCC,* 418 F.2d 1153, 1157 (D.C. Cir. 1969), *affirmed,* 459 F.2d 1203 (D.C. Cir. 1972). In sum, a waiver of our rules is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule. *Northeast Cellular Tel. Co.* v. *FCC,* 897 F.2d 1164, 1166 (D.C. Cir. 1990).

6. For good cause shown, and to reduce the financial burden on programs that the Commission certifies to participate in the NDBEDP and better enable selected participants to fully meet the needs of eligible low-income, deaf-blind individuals in a timely manner, the Commission conditionally waives its rules to permit such programs to submit claims for reimbursement from the TRS Fund more frequently. The Commission finds persuasive applicants' assertions that a six-month reimbursement cycle will impose a hardship that could prevent many entities from participating in the NDBEDP. Many of the non-profit and state or local programs that have applied for certification report that they operate on limited funding that will be strained if forced to wait a full six months for compensation. This is especially true given the high costs of equipment generally required by individuals who are deaf-blind. The Commission finds that the large upfront expenses needed for such equipment justifies a waiver to permit more frequent reimbursement.

7. To be compensated for equipment distributed and services rendered under the NDBEDP pursuant to this waiver, each certified entity must comply with certain conditions. Specifically, each certified entity that wishes to take advantage of this waiver will be permitted to elect a reimbursement schedule on either a monthly or quarterly basis. Such entity must notify the TRS Fund Administrator of its election at the start of each Fund Year, and maintain that schedule for the duration of the Year. Entities electing to seek reimbursement on a monthly or quarterly basis also will be required to submit documentation and a reasonably detailed explanation of costs incurred within 30 days after the end of each month or quarter, respectively, of the Fund Year (July 1 through June 30). *See* 47 CFR 64.610(f)(2) of the Commission's rules. In either case, the TRS Fund Administrator and the NDBEDP Administrator shall review the costs submitted and may request supporting documentation to verify the expenses claimed. *See* 47 CFR 64.610(f) of the Commission's rules. Entities that do not take advantage of this waiver do not need to so notify the Fund Administrator, but will be required to submit documentation and a reasonably detailed explanation of their costs incurred within 30 days after the end of each six-month period of the funding

year, as required by the Commission's rules. *See* 47 CFR 64.610(f)(2) of the Commission's rules. In each case, costs submitted must be for those costs actually incurred during each preceding one-, three-, or six-month period.

8. The Commission further notes that the waiver granted in document DA 12–430 will be for the duration of the NDBEDP pilot program. The purpose of establishing the NDBEDP initially as a pilot program is to provide the flexibility needed to enable certified programs to structure their distribution and service delivery systems to effectively meet the needs of their participants. This flexibility is expected to result in a variety of equipment distribution and service delivery models that could serve as the foundation for establishment of the permanent NDBEDP. The Commission concludes that allowing certified entities to receive the needed funding in a timely manner will better enable such entities to make their programs effective and sustainable, which, in turn, will help inform future Commission decisions regarding a permanent NDBEDP that furthers the public interest.

Ordering Clauses

9. Pursuant to sections 4(i) and 719 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 620, and § 1.3 of the Commission's rules, 47 CFR 1.3, and § 64.610(f)(2) of the Commission's rules is conditionally waived to permit NDBEDP certified programs to submit claims for reimbursement more frequently than once every six months as required by § 64.610(f)(2) of its rules and to submit reimbursement claims up to one time each month.

10. This action is taken under delegated authority pursuant to §§ 0.141 and 0.361 of the Commission's rules, 47 CFR 0.141, 0.361.

Federal Communications Commission.

Karen Peltz Strauss,

Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. 2012–8133 Filed 4–4–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–25; FCC 12–28]

Implementation of the Local Community Radio Act of 2010; Revision of Service and Eligibility Rules for Low Power FM Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petitions for reconsideration.

SUMMARY: In this document, the Commission modifies its rules in order to implement provisions of the Local Community Radio Act of 2010 (''LCRA'') that unambiguously require the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. The Commission also dismisses and/or denies various petitions for reconsideration of the Third Report and Order in MM Docket No. 99–25 and terminates a Second Further Notice of Proposed Rulemaking in that docket.

DATES: Effective June 4, 2012.

FOR FURTHER INFORMATION CONTACT: Peter Doyle (202) 418–2789.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document in MM Docket No. 99–25, FCC No. 12–28, adopted March 19, 2012. A synopsis of the proposed rulemaking segment of this decision will be published in a later issue of the **Federal Register**. The full text of the Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.*

Paperwork Reduction Act Analysis. This Report and Order does not adopt any new or revised information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3501–3520). In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Report to Congress. The Commission will send a copy of this Fifth Report & Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

Summary of Fifth Report and Order and Fourth Order on Reconsideration

I. Introduction

1. In the *Fifth Report and Order,* we modify our rules to implement certain provisions of the Local Community Radio Act of 2010 (''LCRA''), which unambiguously require the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. In the *Fourth Order on Reconsideration,* we dismiss in part and deny in part a petition for reconsideration of the *Third Report and Order* in this docket, which the Commission released in 2007, and terminate the *Second Further Notice of Proposed Rulemaking* (*Second FNPRM*) that accompanied that order.

II. Background

2. In January 2000, the Commission adopted a *Report and Order* establishing the LPFM service. In doing so, the Commission sought ''to create a class of radio stations designed to serve very localized communities or underrepresented groups within communities.'' The Commission created two classes of LPFM facilities. The LP100 class consists of stations with a maximum power of 100 watts effective radiated power (''ERP'') at 30 meters antenna height above average terrain (''HAAT''), providing an FM service radius (1 mV/m or 60 dBu) of approximately 3.5 miles. The LP10 class consists of stations with a maximum of 10 watts ERP at 30 meters HAAT, providing an FM service radius of approximately one to two miles. ''[T]o preserve the integrity and technical excellence of existing FM radio service,'' the Commission adopted separation requirements for LPFM stations operating on co-, first- and second-adjacent channels to full-service FM, FM translator and FM booster stations. The Commission, however, declined to impose third adjacent channel distance separation requirements, and declined to adopt special protections for radio reading services. The Commission specified that LPFM stations operate on a ''secondary'' basis. In other words, LPFM stations generally cannot cause interference to existing and future full-service FM and other ''primary'' stations and are not protected against interference from these stations.

3. To ensure that any new LPFM service included the voices of community-based schools, churches and civic organizations, the Commission established ownership and eligibility rules for the LPFM service. Specifically, the Commission restricted LPFM service to noncommercial educational (''NCE'') operations, and restricted licensee eligibility to applicants with no attributable interests in any other broadcast station or other media subject to the Commission's ownership rules. The Commission also limited eligibility to local entities during the first two years LPFM licenses were available. To choose among entities filing mutually exclusive applications for LPFM licenses, the Commission adopted a point system that favors local ownership and locally-originated programming, with ties between competing applicants resolved by either voluntary time-sharing agreements between such applicants or, in the event that the applicants cannot agree, the imposition of ''involuntary time-sharing,'' with each tied and grantable applicant awarded an equal, successive and non-renewable license term of no less than one year, for a combined total eight-year term.

4. In September 2000, the Commission adopted a *Memorandum Opinion and Order on Reconsideration.* In the *Reconsideration Order,* the Commission revised and clarified some of its LPFM rules, including the local program origination criterion adopted for the point system. The Commission again declined to impose third-adjacent channel separation requirements. Instead, it adopted complaint and license modification procedures to address any unexpected, significant third-adjacent channel interference problems caused by LPFM stations. It also modified the spacing standards to protect radio reading services and adopted procedures for addressing any interference caused by an LPFM station to the input signal of an FM translator or FM booster station.

5. Shortly thereafter, in December 2000, Congress enacted the Making Appropriations for the Government of the District of Columbia for FY 2001 Act (''2001 DC Appropriations Act''). Therein, Congress directed the Commission to prescribe third-adjacent channel spacing requirements for LPFM stations, which the Commission did in April 2001. Congress also directed the Commission to conduct an experimental program to evaluate the likelihood of interference to existing full-service FM stations and FM translator stations if LPFM stations were not subject to third-adjacent channel spacing requirements, and to submit a report that included the Commission's recommendations regarding reduction or elimination of the spacing requirements for third-adjacent channels. The Commission selected an independent third party, the Mitre Corporation (''Mitre''), to conduct field tests. Mitre submitted a report to the Commission, which, in turn, sought comment on the report. In February 2004, the Commission submitted a report to Congress on this issue. Based on the Mitre study, the Commission recommended that Congress ''modify the statute to eliminate the third-adjacent channel distan[ce] separation requirements for LPFM stations.''

6. In March 2005, the Commission adopted a *Second Order on Reconsideration and Further Notice of Proposed Rulemaking.* In the *Second Order,* the Commission modified some of the rules governing the LPFM service, noting that the rules needed adjustment in light of the experiences of LPFM applicants and licensees. In the accompanying *FNPRM,* the Commission sought comment on a number of issues with respect to LPFM ownership restrictions and eligibility. The Commission also proposed certain changes to the rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants. Finally, the Commission sought comment on a number of changes to the LPFM technical rules.

7. In December 2007, the Commission released the *Third Report and Order* and *Second FNPRM.* In the *Third Report and Order,* the Commission resolved the issues raised in the *FNPRM.* Among other things, the Commission set forth an interim processing policy that it would use to consider requests for waiver of the second-adjacent channel spacing requirements from certain LPFM stations, reinstated the local ownership requirement, and clarified its definition of local origination. The Commission also modified the rules governing the formation and duration of voluntary and involuntary time-sharing arrangements among mutually exclusive LPFM applicants. In the *Second FNPRM,* the Commission proposed certain rule changes designed to avoid the potential loss of LPFM stations. The Commission made these proposals ''[i]n light of changed circumstances since [it] last considered the issue of protection rights for LPFM stations from subsequently authorized full-service stations.'' The Commission sought comment on whether to codify the procedures for LPFM stations seeking a waiver of the second-adjacent channel spacing requirements, whether rule changes were warranted to provide additional flexibility to propose LPFM station modifications, whether to require full-service new station and modification applicants to provide technical and/or financial assistance to potentially impacted LPFM stations, whether to adopt contour protection-based licensing standards for LPFM stations, and whether to modify the LPFM–FM translator protection priorities.

8. On January 4, 2011, President Obama signed the LCRA into law. Through the LCRA, Congress expanded LPFM licensing opportunities. Specifically, Congress repealed the requirement that LPFM stations operate a minimum distance from nearby stations operating on third-adjacent channels, and required the Commission to eliminate its third-adjacent channel minimum distance separation requirements. Congress also authorized the Commission to waive the second-adjacent channel spacing requirements if an LPFM station demonstrates that its proposed operations will not result in interference to any authorized radio service. Further, it set forth criteria that the Commission must take into account when licensing FM translator, FM booster and LPFM stations.

9. As Congress expanded LPFM licensing opportunities, it also took steps to provide enhanced interference protection to existing full-service FM, FM translator and FM booster stations. Specifically, while Congress eliminated the third-adjacent channel spacing requirements, it required the Commission to retain the spacing requirements that apply to LPFM stations operating on a third-adjacent channel to FM stations that broadcast radio reading services. Congress also required the Commission to modify its rules to ''address the potential for predicted interference to FM translator input signals on third-adjacent channels,'' and to modify the interference protection and remediation requirements applicable to LPFM stations operating on third-adjacent channels.

III. Fifth Report and Order

10. The LCRA unambiguously requires the Commission to eliminate its third-adjacent channel spacing requirements and to maintain the spacing requirements currently in place to protect radio reading services. We do so in this *Fifth Report and Order.* We take these steps without providing prior public notice and comment because they involve no discretion. We merely are revising our rules in the manner specified in the legislation. Notice and

comment would serve no purpose and thus are unnecessary. Our actions fall within the ''good cause'' exception of the Administrative Procedure Act (''APA'').

A. Third-Adjacent Channel Minimum Distance Separation Requirements

11. Section 2 of the LCRA amends section 632 of the 2001 DC Appropriations Act to delete the requirements that the Commission establish and maintain minimum distance separations for third-adjacent channels. It essentially lays the groundwork for section 3(a) of the LCRA, which requires the Commission to ''modify its rules to eliminate third-adjacent minimum distance separation requirements between—(1) low-power FM stations; and (2) full service FM stations, FM translator stations, and FM booster stations.'' Section 73.807 of the Commission's rules currently sets forth these spacing requirements. We hereby delete the provisions requiring protection of third-adjacent channel stations set forth in that section, with the exception of § 73.807(a)(2), (b)(2) and (g) of our rules.

B. Protection of Radio Reading Services

12. Radio reading services provide access to printed news and other information sources for blind or print-disabled persons. They are transmitted on one of several standardized subcarrier frequencies within a 200 kHz FM channel. These transmissions cannot be received on a standard radio. Listeners must use special radios that tune subcarrier signals to receive these services. When the Commission established the LPFM service in 2000, it initially did not adopt any additional interference protections for radio reading services. The Commission reasoned that subcarrier programming is transmitted within a broadcast station's assigned frequency and thus receives the same protection from interference as the main broadcast programming of the station.

13. The Commission reconsidered this decision shortly thereafter due to concerns about the greater vulnerability of radio reading service receivers to third-adjacent channel interference. It noted that, because of their designs, the subcarrier receivers used for radio reading services are more susceptible to interference than mass marketed receivers. The Commission therefore modified the spacing standards set forth in § 73.807 of the rules to require LPFM stations to satisfy the second-adjacent channel spacing requirements with respect to any third-adjacent channel FM station that broadcasts a radio reading service via a subcarrier frequency.

14. The Commission took this step because, at the time, it had declined to adopt generally applicable third-adjacent channel spacing requirements. It later adopted such requirements at the direction of Congress. These spacing requirements were identical to the second-adjacent channel spacing requirements. Accordingly, while the Commission did not delete the protections specific to FM stations providing radio reading services from the rules, the protections became redundant. Now, however, with the elimination of the third-adjacent spacing requirements, these provisions again have relevance. In this regard, section 4 of the LCRA directs the Commission to ''comply with existing minimum distance separation requirements'' for stations that broadcast radio reading services. Accordingly, we conclude that we must retain without modification §§ 73.807(a)(2) and (b)(2) of our rules to implement section 4.

IV. Fourth Order on Reconsideration

15. As noted above, in the *Third Report and Order,* the Commission adopted an interim waiver processing policy. The Commission also revised § 73.809 and other provisions of the rules in order to protect and preserve the LPFM service. Ace Radio Corporation (''Ace Radio'') filed a petition for reconsideration (''Ace Radio Petition'') of the *Third Report and Order,* which opposed both the interim waiver processing policy and the revisions made to § 73.809. For the reasons discussed below, we deny in part the Petition and defer consideration of the remainder of the Ace Radio's arguments.

16. Ace Radio challenges the interim waiver processing policy. However, in the *Fourth FNPRM,* we tentatively conclude that section 3(b)(2) of the LCRA supersedes this policy. We believe it is appropriate to defer consideration of Ace Radio's arguments regarding the interim waiver processing policy until we have resolved this issue. To the extent Ace Radio's arguments remain relevant, we will consider them at that time.

17. We reject Ace Radio's arguments regarding our revisions to § 73.809 of the rules to remove second-adjacent channels from the interference complaint procedures set forth therein. Ace Radio first argues that it did not have an opportunity to comment on the Commission's proposal to modify § 73.809 of the rules to remove second-adjacent channels from the rule. It also asserts that the revisions to § 73.809 are not justified by the record and, when coupled with the Commission's interim waiver processing policy, will allow LPFM stations to operate within a full-service station's 70 dBu contour, resulting in interference holes, otherwise known as the ''swiss cheese'' effect.

18. The Commission provided ample public notice that it was considering modification of § 73.809 of the rules to remove second-adjacent channels. In the *FNPRM,* the Commission explicitly raised the issue of ''encroachment'' and whether a relaxation of the second-adjacent channel interference restrictions found in § 73.809 of the rules was necessary to prevent LPFM stations from being displaced. While Ace Radio argues that ''the number of city of license applications filed does not justify [the Commission's] action,'' it fails to raise any facts or questions of law showing that the Commission's decision was incorrect. Contrary to Ace Radio's suggestion that the number of LPFM stations at risk of displacement is insignificant, the Bureau identified 44 LPFM stations that could be forced to cease operations as a result of the filing activity resulting from the January 2007 lifting of the freeze on the filing of FM community of license modification proposals combined with the implementation of new streamlined licensing procedures.

19. We also note that Ace Radio has mischaracterized the effects this rule modification will have on signal reception within a full-service station's 70 dBu contour. The diagram provided by Ace Radio portrays the full 60 dBu contour of 118 hypothetical LPFM stations within the 70 dBu contour of a full-service station. The fact that an LPFM station has a 60 dBu contour on a second- or third-adjacent channel inside the 70 dBu contour of a full-service station does not establish that the LPFM station would cause interference. Any potential interference received by the full-service station would be only in the immediate vicinity of the low-power transmitter site, and can be substantially reduced or eliminated through various technical measures. Finally, contrary to Ace Radio's assertion, the Commission did not, in its modification of Section 73.809, remove the second-adjacent restriction for the general allocation processes for LPFMs. Rather, this rule change is limited to situations involving a full-service station that is authorized subsequent to an LPFM station. As such, Ace Radio's concerns are without merit.

V. Termination of Second Further Notice of Proposed Rulemaking

20. As noted above, the Commission issued a *Second FNPRM* in 2007. We find that all of the proposals made in the *Second FNPRM* are either inconsistent with or otherwise mooted by the LCRA. Specifically, the Commission proposed to codify the interim processing policy for second-adjacent channel waiver requests that it adopted in the *Third Report and Order.* However, in the *Fourth FNPRM,* we conclude that the second-adjacent channel waiver provisions of the LCRA supersede this interim policy. Accordingly, we find the Commission's proposal to codify the interim policy to be moot and will not pursue it further. Similarly, we find the Commission's proposal to adopt a contour overlap interference protection approach to be statutorily barred by section 3(b)(1) of the LCRA, which prohibits the Commission from modifying the current co-channel and first- and second-adjacent channel distance separation requirements. We will not pursue this proposal either. Finally, the Commission proposed certain rule changes related to LPFM station displacement, the obligations of full-service new station and modification applicants to potentially impacted LPFM stations, and LPFM–FM translator protection priorities. We believe that Congress's adoption of the LCRA renders pursuit of those earlier proposals unnecessary at this time. Thus, we will not move forward with any of them. Given our findings regarding each of the proposals set forth by the Commission in the *Second FNPRM,* we consider the *Second FNPRM* to have been concluded.

VI. Adminstrative Matters

A. Congressional Review Act

21. The Commission will send a copy of this *Fifth Report and Order* to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

VII. Ordering Clauses

22. Accordingly, *It is ordered,* pursuant to the authority contained in the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i), 303, 307, and 309(j) of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, 307, and 309(j), that this *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration* is adopted.

23. *It is further ordered* that pursuant to the authority contained in the Local Community Radio Act of 2010, Public Law 111–371, 124 Stat. 4072 (2011), and sections 1, 2, 4(i), 303, and 307 of the Communications Act of 1934, 47 U.S.C. 151, 152, 154(i), 303, and 307, the Commission's rules are hereby amended. It is our intention in adopting these rule changes that, if any provision of the rules is held invalid by any court of competent jurisdiction, the remaining provisions shall remain in effect to the fullest extent permitted by law.

24. *It is further ordered* that the rules shall be effective June 4, 2012.

25. *It is further ordered* that the Petition for Rulemaking filed by REC Networks on July 16, 2004, is hereby dismissed, and Proceeding No. PRM–04–MB is terminated.

26. *It is further ordered* that the Petition for Reconsideration filed by Ace Radio Corp. on February 19, 2008, is denied in part.

27. *It is further ordered* that the *Second Further Notice of Proposed Rulemaking* in MM Docket No. 99–25 is terminated.

28. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Fifth Report and Order, Fourth Further Notice of Proposed Rulemaking and Fourth Order on Reconsideration,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration, and shall cause it to be published in the **Federal Register**.

List of Subjects in 47 CFR Part 73

Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 to read as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

■ 2. Section 73.807 is amended by revising the introductory text to read as follows:

§ 73.807 Minimum distance separation between stations.

Minimum separation requirements for LP100 and LP10 stations, as defined in §§ 73.811 and 73.853, are listed in the following paragraphs. An LPFM station will not be authorized unless the co-channel, first- and second-adjacent and IF channel separations are met. An LPFM station need not satisfy the third-adjacent channel separations listed in paragraphs (a) through (d) in order to be authorized. Minimum distances for co-channel and first-adjacent channel are separated into two columns. The left-hand column lists the required minimum separation to protect other stations and the right-hand column lists (for informational purposes only) the minimum distance necessary for the LPFM station to receive no interference from other stations assumed to be operating at the maximum permitted facilities for the station class. For second-adjacent channel and I.F. channels, the required minimum distance separation is sufficient to avoid interference received from other stations.

* * * * *

[FR Doc. 2012–8129 Filed 4–4–12; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2012–0039]

RIN 2127–AJ93

Federal Motor Vehicle Safety Standards; Platform Lifts for Motor Vehicles; Platform Lift Installations in Motor Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document adopts amendments to the Federal motor vehicle safety standards on platform lift systems for motor vehicles. The purpose of these standards is to prevent injuries and fatalities during lift operation. NHTSA believes it is necessary to revise the lighting requirements for lift controls; the location requirements, performance requirements, and test specifications for threshold warning signals; the wheelchair retention device and inner roll stop tests; and the lighting requirements for public use lifts. This notice also discusses a November 3, 2005 interpretation clarifying specific procedures that are performed as part of the threshold warning signal test.

DATES: *Effective date:* This final rule is effective May 7, 2012.

Compliance date: Mandatory compliance with this final rule is required beginning October 2, 2012. Optional compliance is permitted beginning April 5, 2012.

Petitions for reconsideration: If you wish to petition for reconsideration of this rule, your petition must be received by May 21, 2012.

ADDRESSES: If you submit a petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., West Building, Washington, DC 20590.

The petition will be placed in the public docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

FOR FURTHER INFORMATION CONTACT: For technical issues, you may contact Mike Pyne, NVS–123, Office of Rulemaking, by telephone at (202) 366–2720, by fax at (202) 366–2739, or by email to *mike.pyne@dot.gov.* For legal issues, you may contact David Jasinski, Office of the Chief Counsel, NCC–112, by telephone at (202) 366–2992, by fax at (202) 366–3820, or by email to *david.jasinski@dot.gov.* You may send mail to both of these officials at National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

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I. Background

On December 27, 2002, the agency published in the **Federal Register** a final rule establishing FMVSS No. 403, *Platform lift systems for motor vehicles,* and FMVSS No. 404, *Platform lift installations in motor vehicles.*[1] We established these two standards to provide practicable, performance-based requirements and compliance procedures for the regulations promulgated by DOT under the Americans with Disabilities Act (ADA),[2] and to ensure the safety of vehicles equipped with those lift systems. FMVSS Nos. 403 and 404 provide that only lift systems that comply with objective safety requirements may be sold and installed on new motor vehicles, and that vehicles with lift systems must comply with objective safety requirements in order to be sold.

FMVSS No. 403 establishes requirements for platform lifts that are designed to carry passengers with limited mobility, including those who rely on wheelchairs, scooters, canes and other mobility aids, so that they can move into and out of motor vehicles. The standard requires that these lifts meet minimum platform dimensions and maximum size limits for platform protrusions and gaps between the platform and either the vehicle floor or the ground. The standard also requires handrails, a threshold warning signal, and retaining barriers and specifies performance tests.

FMVSS No. 404 establishes requirements for vehicles that, as manufactured, are equipped with platform lifts. The lifts installed on those vehicles must be certified as meeting FMVSS No. 403, must be installed according to the lift manufacturer's instructions, and must continue to meet all of the applicable requirements of FMVSS No. 403 after installation. The standard also requires that specific information be made available to lift users.

Recognizing that the usage patterns of platform lifts used in public transit differ from those of platform lifts for individual (i.e., private) use, the agency established separate requirements for public use lifts and private use lifts. FMVSS No. 404, S4.1.1 requires that the lift on each lift-equipped bus, school bus and multipurpose passenger vehicle other than a motor home with a gross vehicle weight rating (GVWR) more than 4,536 kg (10,000 lb) must be certified as meeting all applicable public use lift requirements set forth in FMVSS No. 403. FMVSS No. 404, S4.1.2 requires the lift on each lift-equipped vehicle with a GVWR of 4,536 kg (10,000 lb) or less to be certified to either the public use or private use lift requirements set forth in FMVSS No. 403. Different requirements apply to vehicles with public use lifts than to vehicles with private use lifts because public use lifts generally are subject to more stress and cyclic loading and will be used by more numerous and varied populations.

As required by the ADA, FMVSS Nos. 403 and 404 are consistent with the Architectural and Transportation Barriers Compliance Board (ATBCB) guidelines published on September 6, 1991.[3] In order to provide manufacturers sufficient time to meet any new requirements established in FMVSS Nos. 403 and 404, the agency provided a two-year lead-time, which scheduled the standards to become effective on December 27, 2004.

On October 1, 2004, in response to petitions for reconsideration of its December 27, 2002 final rule, the agency published a final rule in the **Federal Register** revising FMVSS Nos. 403 and 404. Among the changes made by the October 1, 2004 final rule, the agency amended edge guard requirements and the wheelchair test device specifications.[4]

On December 23, 2004, the agency published an interim final rule in the **Federal Register** delaying the compliance date until April 1, 2005 for FMVSS No. 403 and July 1, 2005 for FMVSS No. 404.[5] On July 15, 2005, the agency published in the **Federal Register** its disposition of petitions for reconsideration of its October 1, 2004 final rule and other submissions regarding that final rule.[6] The July 15, 2005 document did not address submissions received from the Blue Bird Body Company (Blue Bird), the School Bus Manufacturers Technical Council (SBMTC), which represents school bus manufacturers (including Blue Bird), and the Manufacturers Council of Small School Buses (MCSSB), an affiliate of the National Truck Equipment Association formed to represent the interest of small manufacturers. The

[1] 67 FR 79416.

[2] Public Law 101–336, 42 U.S.C. 12101, *et seq.* The ADA directed the DOT to issue regulations to implement the transportation vehicle provisions that pertain to vehicles used by the public. Titles II and III of the ADA set specific requirements for vehicles purchased by municipalities for use in fixed route bus systems and vehicles purchased by private entities for use in public transportation to provide a level of accessibility and usability for individuals with disabilities. 42 U.S.C. 12204.

[3] 56 FR 45530.

[4] 69 FR 58843.

[5] 69 FR 76865.

[6] 70 FR 40917.

submissions, which were styled as petitions for reconsideration, requested changes in the required level of lighting on public use lift platforms. Since the agency did not address that issue of lighting levels in the October 2004 final rule, there was no agency action regarding lighting to be reconsidered. The agency stated in the notice that it would treat the submissions as petitions for rulemaking and respond in a separate notice.

NHTSA received three additional petitions for rulemaking after July 15, 2005, seeking revisions to FMVSS Nos. 403 and 404. Specifically, we received petitions from Maxon Lift Corporation (Maxon), Ricon Corporation (Ricon) and the Lift-U Division of Hogan Manufacturing, Inc. (Lift-U), all of which are platform lift manufacturers. The petitioners requested that the agency amend: (A) The control panel switch requirements in S6.7.6.2 of FMVSS No. 403 so that lift controls in locations remote from the driver's seating position are not subject to the illumination requirements in S5.3 of FMVSS No. 101; (B) the threshold warning signal requirements in S6.1.4 of FMVSS No. 403 to permit warning lights to be mounted in a location clearly visible in reference to the lift; (C) the threshold warning signal requirements in S6.1.4 and S6.1.6 of FMVSS No. 403 to clarify the units of measurement and minimum required luminance at the designated measurement point; (D) the threshold warning test in S7.4 of FMVSS No. 403 to include a performance test for warning systems using infrared and other sensor technologies; (E) the wheelchair test device specification in S7.1.2 of FMVSS No. 403 to include anti-tip devices; (F) the wheelchair retention device impact test specifications in S7.7 of FMVSS No. 403 to permit use of a loaded wheelchair test device; and (G) the requirements for platform lighting on public use lifts in S4.1.5 of FMVSS No. 404 to reduce the required illumination levels to those specified by the ADA and the Federal Transit Administration (FTA).

II. Summary of the NPRM

In a notice of proposed rulemaking (NPRM) published on December 20, 2007,[7] NHTSA proposed to amend the text of FMVSS Nos. 403 and 404. That NPRM addressed the six pending petitions for rulemaking. The NPRM also proposed additional changes to FMVSS Nos. 403 and 404 based upon NHTSA's experience during compliance testing.

First, in response to the petition from Maxon, NHTSA proposed an amendment to make it clear that the illumination requirements of FMVSS No. 101 do not apply to controls that are located outside the vicinity of the driver. Under the proposed amendments, controls within the vicinity of the driver, as defined in S5.3.4(a) of FMVSS No. 101, would be required to comply with the FMVSS No. 101 illumination requirements. The purpose of the FMVSSS No. 101 requirement is to prevent illuminated controls from distracting a driver who has adapted to dark ambient roadway conditions. That concern is not present for controls outside the vicinity of the driver. The proposed amendment also specified that lift controls outside the vicinity of the driver have a means for illuminating characters to make them visible under both daylight and nighttime conditions.

In response to the petition from Maxon, NHTSA proposed an amendment to the threshold warning signal location in S6.1.4 of FMVSS No. 403. The present language requires that the visual warning signal be installed such that it does not require more than a ± 15 degree side-to-side head rotation as viewed by a passenger in a wheelchair backing onto the platform from the interior of the vehicle. The agency acknowledged that the requirement created ambiguity because it did not specify whether the measurement was a line-of-sight measurement or whether peripheral vision may be used. Consequently, NHTSA proposed defining the requirement so that visual warning must be visible from a point 914 mm (3 ft) above the center of the threshold warning area.

In response to the petition from Ricon, NHTSA proposed an amendment to clarify the units of measurement and minimum required luminance of the visible threshold warning signal. The visual warning is required to be a flashing red beacon with a minimum intensity of 20 candela, and the intensity measurement is taken away from the source. Ricon stated that it had confirmed that ''candela'' is a measurement of output at the source, and, to measure luminous intensity at a specified distance from a source, the measurement should be specified in ''lux'' or ''foot-candles.'' In response, NHTSA proposed removing the requirement that the visible intensity be measured away from the source and replaced it with a more general visibility requirement.

In response to the petition from Lift-U, NHTSA proposed revising S7.4 to include a performance test for threshold warning systems using infrared and other technologies. Lift-U acknowledged that the current test is effective for testing technologies that sense weight. However, Lift-U stated that the substantive requirement in S6.1 does not specify the use of a warning device that senses weight. NHTSA proposed amending S7.4 to include the option of performing the current threshold warning test with an occupant in the wheelchair test device.

In response to the petition from Ricon, NHTSA proposed amending the wheelchair retention impact test specifications in S7.7 to permit the addition of a 50 kg (110 pound) weight to the wheelchair test device during the test. Ricon contended, and NHTSA's test data confirmed, that the center of gravity of an unloaded wheelchair changes significantly upon impact with an outer barrier. That change, when combined with continued forward motion of the drive wheels, caused the test device to flip backwards, resulting in failure of the test. NHTSA proposed allowing the addition of the weight because this failure is due to the test procedure rather than any inadequacy in the wheelchair retention device.

The petition from Ricon and the recent testing also caused NHTSA to propose amending the wheelchair retention test specifications in S7.7 and the inner roll stop test specifications in S7.8 to provide for the turning off the wheelchair drive motor after the initial impact by the test device. The agency stated that it could be difficult to design wheelchair retention devices and inner roll stops that protect wheelchair passengers from all possible situations without interfering with the normal operation of the lift. The agency also stated its belief that it was sufficient to ensure that the strength and configuration of wheelchair retention devices and inner roll stops are designed so that wheelchairs will not plow through or roll over them. In a typical real world situation, persons occupying wheelchairs would not be operating them at high rates of speed on the platform, and would turn off the drive power upon impact with a barrier. The agency proposed amendments to the test specifications in S7.7 and S7.8 because maintaining power after the initial impact may result in testing inconsistencies due to differences in the drive wheel torque and stall rates of some test devices. Turning off the power would also stabilize the wheelchair test device after impact and prevent damage

[7] 72 FR 72326 (Docket No. NHTSA–2007–0052).

to the wheelchair test device and the lift.

As a consequence of this amendment, NHTSA also proposed amending S6.4.7 to eliminate the requirement that the wheelchair test device remain upright with all of its wheels in contact with the platform surface following impact. Instead, NHTSA proposed to revise S6.4.7 to provide that a wheelchair retention device passes the impact test if, after impact, the wheelchair test device remains supported by the platform surface with none of the axles of its wheels extending beyond the plane that is perpendicular to the platform reference plane (Figure 1) which passes through the edge of the platform surface that is traversed when entering or exiting the platform from the ground level loading position. The proposed test criteria references axles rather than wheels to prevent the occurrence of another type of test failure during rearward testing, i.e., one in which the large wheels of the wheelchair test device may rest on the platform and touch the outer barrier with the tires extending beyond the plane after impact. A similar amendment was proposed to the inner roll stop test.

In response to petitions from Blue Bird, the SBMTC, and the MCSSB, the agency proposed reducing the platform illumination requirements for public lifts in S4.1.5 of FMVSS No. 404. NHTSA proposed reducing the illumination requirements to those specified by the ADA and the FTA. NHTSA intended that its current requirements not produce an additional burden on public use manufacturers. However, NHTSA was convinced by the petitioners' arguments that the agency was placing additional burdens on manufacturers by requiring that they comply with both the ADA requirements and the more rigorous requirements in FMVSS No. 404. Furthermore, NHTSA noted the intervening enactment of the National Technology Transfer and Advancement Act,[8] which requires Federal agencies to use available technical standards that are developed or adopted by a voluntary consensus standards body, in lieu of government-unique standards, except where use of those voluntary consensus standards is inconsistent with law or otherwise impractical.

NHTSA also proposed four technical changes. First, NHTSA proposed amending S7 of FMVSS No. 403 to require the performance of the handrail test in S7.12 on a lift/vehicle combination rather than on a test jig. The handrail requirements in S6.4.9.8 require 38 mm (1.5 in) of clearance between each handrail and any portion of the vehicle, throughout the range of passenger operation. It is not possible to determine that clearance if the test is conducted on a jig.

NHTSA also proposed a correction to Figure 2 of FMVSS No. 403. Currently, the height of the measurement point from which the intensity of the threshold audible warning is measured is identified as 919 mm. The proposed amendment would replace that distance with the correct measurement point of 914 mm (3 feet).

NHTSA also proposed an amendment to clarify the control panel switch requirements of S6.7.4. Currently, there is an ambiguity regarding what must happen when two or more switches are actuated simultaneously. The proposed amendment would require that, if one or more functions are actuated while an initial function is actuated, the platform must either continue in the direction dictated by the original function or stop.

NHTSA proposed amending the interlock requirements and test procedures in S6.10.2.4, S6.10.2.5, S6.10.2.6, S6.10.2.7, S7.5, and S7.6 of FMVSS No. 403. The purpose of the proposed amendments was to eliminate confusion, discovered as a result of compliance testing and communications from a lift manufacturer. The proposed amendments would revise and renumber S7.5.2 and S7.5.3 to make clear that those provisions constitute a single test procedure that is applicable to both the requirements of S6.10.2.5 and S6.10.2.6. The proposed amendments would also change the test procedure set forth in those provisions to ensure that an outer barrier is fully deployed by the time the platform is 75 mm (3 in) above the ground. NHTSA also proposed a similar amendment to the inner roll stop test procedure set forth in S7.6.2 and S7.6.3.

Finally, NHTSA included discussion of a November 3, 2005 interpretation. That interpretation is repeated in Section V below to ensure wide-spread dissemination.

III. Comments and Analysis

NHTSA received five comments in response to the NPRM from the following parties: Maxon Lift Corporation (Maxon); the American Association of Justice (AAJ); the National Truck Equipment Association (NTEA); [9] Blue Bird Body Company (Blue Bird); and Lift-U Division of Hogan Manufacturing, Inc. (Lift-U). Maxon addressed the handrail test procedure and the outer barrier interlock test procedure. The AAJ's comment solely addressed the issue of preemption of State tort law. The NTEA and Blue Bird addressed the platform illumination test procedure. Lift-U's comment addressed the barrier impact test. We address these comments in detail below.

We received no comments on several topics for which amendments were proposed in the December 2007 NPRM. We received no comments on the following proposed amendments: Limiting the FMVSS No. 101 control illumination requirement to lift controls located near the driver; modifying location and intensity requirements for the threshold warning beacon; including the option of using a 5th percentile female for the threshold warning test procedure to allow for the possibility of lift systems using infrared sensors; and continuing to exclude the anti-tip devices from the specification for the standard test wheelchair specified in paragraph S7.1.2 of FMVSS No. 403. Except as discussed below, we have included the proposed amendments in the regulatory text without further discussion for the reasons set forth in the December 2007 NPRM.

A. Use of Auxiliary Retention Devices for Interlock Procedure

Maxon commented on the proposed technical change that would amend the test procedure for outer barrier interlock testing. In the December 2007 NPRM, NHTSA proposed revising the test procedure to ensure that the outer barrier by fully deployed by the time the platform is 75 mm (3 in) off the ground. The proposed language would provide for the platform to be moved up until the platform is 75 mm (3 in) above the ground. Thereafter, the front wheel of the wheelchair test device is placed on the edge of the outer barrier and the platform is moved up until it stops. If the interlocks are working correctly, the wheel of the wheelchair test device will prevent the outer barrier from deploying, the wheelchair test device wheel will not move vertically upward more than 13 mm (0.5 in), and the platform will stop automatically before the upper surface is greater than 75 mm (3 in) above the ground.

Maxon expressed concern involving the potential use of auxiliary wheelchair retention devices such as belts. Maxon states that that these devices are designed to disable lift operation when they are unfastened. Accordingly, Maxon contends, it would be necessary to fasten such devices prior to

[8] Public Law 104–113.

[9] NTEA's comments were on behalf of two of its affiliate divisions—the MCSSB and the Mid-Size Bus Manufacturers Association (MSBMA).

conducting the outer barrier interlock test in S7.5. Maxon requested clarification as to whether belt-type retention devices can and should be fastened prior to testing.

Agency's Response: We are clarifying the proposed language as a result of Maxon's comment. We recognize that auxiliary retention devices such as a belt can disable lift operation when they are not fastened, and we agree with Maxon that the failure to fasten such a belt would render the test moot. To remedy the ambiguity, we are adding language to S7.5.1.1, as proposed, to clarify that other retention devices are configured so that they do not prevent lift operation.

B. Barrier Impact Test

Lift-U commented on proposed changes to the barrier impact test. In the December 2007 NPRM, the agency proposed several changes to the barrier impact test, including a change to the test procedure so that the wheelchair test device's power is cut off after initial impact with the barrier. The agency stated that turning off power during the wheelchair retention and inner roll stop impact tests would stabilize the wheelchair test device after impact and thereby help prevent technical failures and related damage to the wheelchair test device or the lift.

Lift-U contended in its comment that the power to the drive wheels should be maintained after impact to test the effectiveness of the wheelchair retention device. Lift-U stated that the wheelchair retention device is, arguably, the most important safety device on the lift platform system because it is the only means of preventing a wheelchair and passenger from rolling off the edge of the platform. Lift-U stated that an effective test method must demonstrate that the retention device cannot be defeated.

Lift-U also disagreed with some of the agency's assertions in the December 2007 NPRM in support of the proposed change. NHTSA stated that, in typical real world situations, occupied wheelchairs will not be moving at high rates of speed on the platform. Lift-U contended that the agency's reasoning is flawed because the test itself is an implicit acknowledgement that it is possible for occupants to lose control of their mobility device on a platform. Lift-U further stated that the agency's assumption that occupants would terminate drive power upon impact with a barrier assumes that the occupant is able to do so.

Lift-U stated that the proposed test procedure must be evaluated against the stated test objective. In its comment, Lift-U noted the agency's two objectives—preventing the test device from plowing through or rolling over the top of the barrier.

Lift-U questioned what is meant by the term ''initial impact.'' Lift-U stated that, if it is defined as ''initial contact,'' then the release of power to the wheelchair test device would subject the barrier to an inconsequential impact. Lift-U also stated that the moment of ''initial impact'' could be the moment the barrier reaches its maximum deflection due to the impact, thereby demonstrating that the barrier is sufficient to absorb the impact.

However, even if this more rigorous interpretation is intended, Lift-U contended that this part of the test cannot demonstrate whether the barrier is effective at preventing a wheelchair from rolling over the top. Lift-U stated that height and rigidity are the two aspects of barrier design that would determine its effectiveness, and that even a tall barrier would be susceptible to a wheelchair rolling over it if the barrier is not sufficiently rigid, while a rigid barrier could be defeated if its height were insufficient to prevent being over-topped by a wheelchair. In either case, Lift-U contends that the adequacy of the barrier can be determined only when the wheelchair has had the opportunity to climb over it after the initial impact.

Lift-U questioned the agency's assertion that continued application of wheelchair drive power leads to technical failures that are unrelated to the barrier's safety. Lift-U also questioned the agency's statement that it could be difficult to design retention devices and inner roll stops that protect wheelchair passengers in all situations without interfering with normal lift operation. Lift-U concluded that the present regulatory language provides a means to test all aspects of a barrier's design and thereby demonstrates its adequacy.

Finally, Lift-U supported other proposed changes to the barrier impact test. Specifically, Lift-U supported the option of adding a weight to the wheelchair test device and the change in the compliance criteria.

Agency's Response: NHTSA is not making any substantive changes to the proposal based upon Lift-U's comment. However, we are clarifying the regulatory text to ensure that the term ''initial impact'' is not misunderstood. We recognize the merit in Lift-U's argument in favor of retaining the present test, in which the power to the wheelchair test device is not turned off until all wheelchair motion stops (except for the drive wheels). Nevertheless, we believe that a test in which the power to the wheelchair test device is turned off after initial impact is more practicable while also meeting the safety purpose of the standard.

Our experience to date with the present test procedure has demonstrated that the behavior of the wheelchair test device is often unstable and erratic if drive power continues to be applied after impact. We have observed that the wheelchair test device can bounce violently on the platform, repeatedly ram into the barriers and other components of the lift, flip over backwards or sideways, or fall off the platform completely. Some of this behavior may reflect possible outcomes of actual lift use, as Lift-U has stated (e.g., a malfunctioning wheelchair). However, the test is so inconsistent as to be impracticable for compliance testing. Furthermore, the test is often damaging to the wheelchair test device.

Regarding the meaning of the term ''initial impact,'' we agree with Lift-U that turning off drive power immediately at the moment of initial contact with the barrier would be an insufficient test of the barrier's integrity. Allowing the entire impact to be sustained by the barrier before turning off drive power to the wheelchair test device (that is, releasing the joystick controller) involves a more substantial infliction of force against that barrier. When the wheelchair test device strikes the barrier, slack and elasticity allow the wheelchair test device to deflect the barrier until the striking force is counteracted. The barrier will deflect and bend before developing enough force to stop and begin to reverse the wheelchair test device's motion.

We believe ''initial impact'' includes all of the transfer of energy from the wheelchair test device to the barrier that takes place during this process. Our intention is that power to the wheelchair test device should be released only after the full impact cycle described above is completed. The proposed change merely eliminates additional impacts which may occur as a result of the wheelchair test device bouncing repeatedly off the barrier. We believe those subsequent impacts are unnecessary and that withstanding the first full impact is both a rigorous demonstration of barrier integrity and an adequate test of compliance with the requirement. To clarify our intent, we are changing the text of S7.7.2.4 to make clear that the complete initial impact of the wheelchair test device is absorbed by the barrier. Because identical language is also used in the procedure for the inner barrier impact test, we are making an identical change to S7.8.3.

Otherwise, we are proceeding with the change in the barrier impact test procedure as proposed in the December 2007 NPRM.

C. Handrail Test Procedures

Among the technical changes proposed in the December 2007 NPRM were amendments to the handrail test procedures in FMVSS No. 403. S6.4.9 details the handrail requirements for public and private use lifts. S6.4.9.8 of that standard provides that, when tested in accordance with S7.12.1, there must be at least 38 mm (1.5 in) of clearance between each handrail and any portion of the vehicle, throughout the range of passenger operation. In order to measure this clearance, the lift must be mounted on a vehicle during the test. The proposed amendments would require the handrail test in S7.12 to be performed on a lift/vehicle combination rather than on a test jig.

Maxon commented that NHTSA should not make the proposed change for three reasons. First, Maxon noted that measurement of handrail displacement on a lift mounted on a test fixture is already difficult and it would be made more difficult by mounting the lift on a vehicle. Maxon stated that the added movement could make the accuracy of the measurement questionable. Second, Maxon observed that S7.12.1 does not require measurement throughout the range of passenger operation, which does not ensure that clearance is maintained at all lift positions. Third, Maxon noted that S7.12.1 and S7.12.2 do not specify a direction for the applied test load. As a consequence, Maxon contends, a manufacturer could test only in the most favorable direction and test only one vehicle. Maxon concluded that the proposed change would increase the testing burden without providing any increase in safety to passengers because the test would not ensure that lifts have adequate handrail clearance in all applications.

Agency's Response: We have not made any changes to the proposed handrail test procedures based on Maxon's comments. It appears from Maxon's comments that the commenter has misinterpreted the handrail test requirement and the general applicability of FMVSS No. 403. Regarding the use of an actual vehicle rather than a test fixture, we believe that the purpose of the test is to reflect real world use and clearances. Although some FMVSS No. 403 test procedures can be performed on a test fixture without any compromise in the validity of the test or its applicability to actual use of the lift, in many cases a handrail test performed on a test fixture would not simulate actual handrail clearance and could fail to ensure the safety of lift users under actual operating conditions.

Regarding measurement accuracy, we note that Maxon did not provide any information to substantiate their assertion that handrail tests conducted on a lift/vehicle combination are inadequate compared to tests conducted on a test fixture. Thus, we do not have any basis for determining that handrail displacement tests on a lift/vehicle combination are impractical.

Maxon's other concerns are based on a misunderstanding of how NHTSA conducts compliance testing. Although Maxon states that measurement of handrail displacement is required only in one lift position, we observe that S6.4.9.8 states that the required handrail clearance must be maintained throughout the range of passenger operation. Maxon's statement that a lift manufacturer could test handrail deflection only in a single direction is similarly incorrect. Paragraphs S6.4.9.7 and S6.4.9.9 both state that the required force is applied at any point and in any direction on the handrail. NHTSA's regulations state, at 49 CFR 571.4, that the term ''any'' indicates that a requirement must be met at all points within a range of possible points. In this case, the use of the word ''any'' in S6.4.9.7 and S6.4.9.9 means that a handrail can be tested and must comply with the standard in every possible direction in which it deflects when subjected to the specified force.

D. Measurement Procedure for Platform Illumination

Both Blue Bird and the NTEA submitted comments related to the proposed test procedure for platform illumination in FMVSS No. 404. The platform illumination requirement applies to public-use lifts and is intended to facilitate lift use in darkness. S4.1.5 currently requires that public use lifts have a light or set of lights that provides at least 54 lm/m^2 (5 lm/ft^2) of luminance on all portions of the surface of the platform, throughout the range of passenger operation.

In the December 2007 NPRM, the agency proposed to reduce the required light intensity from 54 lm/m^2 (5 lm/ft^2) to 22 lm/m^2 (2 lm/ft^2). This reduction would bring the FMVSS No. 404 requirement into accord with ADA and FTA light intensity requirements.

In response to comments received by the agency regarding the lack of a test procedure to demonstrate compliance with the lighting requirement, NHTSA proposed amendments to S4.1.5 to set forth how platform illumination is to be measured. Specifically, the agency proposed the following procedures for platform illumination measurement:

- Illumination measurements would be recorded with the vehicle engine shut off.
- The vehicle and lift would be in an environment in which there is no ambient light.
- The sensor portion of the light meter would be within 50 mm (2 in) of the surface being measured.
- The measurement would be made with a light meter that has a range comparable to a minimum of 0 to 100 Lux, in increments comparable to 1 Lux or less, an accuracy of ± 5% of the actual reading and a sampling rate of at least 2 Hz.

Vehicle Battery Condition

Both Blue Bird and the NTEA observed that, because the proposed test would be conducted with the vehicle's engine shut off, the light illumination level would be affected by the vehicle battery condition. The NTEA asked if NHTSA agreed that the test should be conducted with the vehicle's battery fully charged with a voltage of approximately 12 volts DC. Blue Bird suggested adding a paragraph to FMVSS No. 404 that would specify the battery condition at the time of testing. Blue Bird's suggested regulatory language would require that the battery be in a fully charged condition as defined by the battery manufacturer or, if such information cannot be obtained, industry-accepted third party sources be consulted, and would include measurements of the voltage, temperature, and specific gravity of the battery.

Agency's Response: We agree that the state of charge of a vehicle battery could affect illumination testing under our proposed test procedure. We proposed that the test be conducted when the engine is not running, which we believe is appropriate because lifts often must be operated with the engine turned off. The proposed test procedure simulates a more rigorous condition than if the engine were running.

We have considered specifying a minimum voltage for the vehicle battery for the platform illumination test. However, FMVSS No. 404 does not directly concern the operation of the vehicle's electrical system. Furthermore, the specification of a minimum battery voltage could be design-restrictive and would neglect differences between vehicles. For example, some lift-equipped vehicles could have an auxiliary battery, which may or may not provide extra power for lift lighting. In such a case, it could be unclear which

battery voltage would be applicable to the FMVSS No. 404 test. Furthermore, we do not believe regulation of the specific gravity of a battery is warranted because compliance tests are conducted on new vehicles. Consequently, the batteries of vehicles that are tested would be relatively new and unaffected by dilution, sulfation, or other factors that could degrade the electrolyte in older batteries.

We believe that a performance-based approach for the illumination test will be simpler and less design-restrictive. Accordingly, we are altering the proposed test procedure to require that the lift-equipped vehicle must be operated prior to testing. Specifically, we are requiring that the engine be run for a minimum of 20 minutes by idling or driving the test vehicle with the vehicle's HVAC system turned off. Thereafter, the engine would be turned off and the test conducted. We believe 20 minutes is an appropriate amount of time to charge the battery and, if necessary, to warm it to conduct a consistent test. We believe that this performance-based test, rather than the minimum battery voltage proposed by the commenters, ensures sufficient battery voltage in a way that closely reflects real-world use of a platform lift system mounted on a vehicle.

Illumination Levels

The NTEA's comment supported adopting the ADA requirements for platform illumination levels. However, the NTEA noted that, to fully comply with ADA requirements, vehicle manufacturers have added more lighting in the vehicle doorway to achieve the lighting required on the ground beyond the deployed lift. The NTEA states that this additional lighting could be problematic because the intensity and positioning of lamps have the potential to obscure a lift operator's vision and could create a burn hazard.

Agency's Response: We have not made any change to our proposal based on this comment. We have no authority to alter the ADA requirement for lighting the ground beyond a deployed platform lift. The December 2007 NPRM concerned only illumination of the platform itself, and lighting the ground beyond a platform lift is beyond the scope of what was proposed in the December 2007 NPRM. The NTEA's comment acknowledges that this is not an issue specific to NHTSA.

Measurement of Illumination

Blue Bird requested that the light meter sample rate not be specified in the platform illumination test procedure and that the sensor measurement range not be specified. With respect to light meter sample rate, Blue Bird stated that specifying a light meter sample rate could be interpreted to prohibit the use of analog light meters. Blue Bird also requested that the measurement range for the light meter not be specified because it is not unusual for parts of a platform lift surface to be illuminated in excess of 100 Lux, and a technician conducting measurements would be able to judge an appropriate measurement range.

Agency's Response: Regarding the light meter measurement range, we note that the 0 to 100 Lux measurement range set forth in the proposal is a minimum range. Thus, any meter with a full-scale range equal to or greater than that is acceptable. In cases with the illumination level exceeds 100 Lux, there is no limitation on using a device with a greater range (or using a higher scale setting on a device with selectable ranges). We also note that the capability of taking illumination readings above 100 Lux is superfluous because compliance with S4.1.5 is established far below 100 Lux.

Nevertheless, we have reevaluated those specifications and believe that they do not need to be included in the regulatory text. Accordingly, we are deleting those specifications from the proposed S4.1.5 test procedure, and manufacturers will be able to certify their platform lighting system using any analog or digital light meter. However, we give notice that, for NHTSA's compliance testing, we intend to use a light meter that meets the specifications set forth in the December 2007 NPRM, and we will be amending the FMVSS No. 404 Test Procedure, NHTSA TP–404, accordingly.

E. Preemption

In the view of AAJ, NHTSA's discussion in the December 2007 NPRM of the 2000 Supreme Court case, *Geier* v. *American Honda Motor Co.,* 529 U.S. 861, and the agency's assessment of the possibility of preemption represented a ''sudden decision to claim [implied] preemption'' of State tort law.

Agency's Response: The discussion in that notice was similar to the discussions in other agency notices of that period. As this agency has previously explained, AAJ generally misinterpreted those discussions.[10]

IV. Technical Corrections

The amendments in Section IV were not proposed in the December 2007 NPRM. The agency has determined that good cause exists for the following technical corrections to be issued without publishing advance notice of the amendments or providing opportunity for public comment. The amendments discussed in Section IV correct obvious errors in regulatory text created by NHTSA's FMVSS Nos. 403 and 404 rulemakings. In one case, the technical correction reverses an earlier inadvertent change to regulatory text that was made without any discussion in the preamble.

A. Definition of Motor Home

In the December 2002 final rule establishing FMVSS Nos. 403 and 404, NHTSA added a definition for ''motor home'' to 49 CFR 571.3 that applies to all FMVSSs. In that final rule, the agency categorized a motor home as a ''multi-purpose vehicle.'' However, NHTSA intended to categorize a ''motor home'' as a ''multipurpose passenger vehicle.'' The term ''multipurpose passenger vehicle'' is defined in section 571.3, whereas the term ''multi-purpose vehicle'' is not defined. We are correcting this obvious error in this final rule.

B. Change to Application Section

In the October 2004 final rule responding to petitions for reconsideration, NHTSA amended the ''Application'' section (S3) of FMVSS Nos. 403 and 404. The agency made changes to the ''Application'' section to make clear that FMVSS Nos. 403 and 404 do not apply to systems involving specialized medical transport. In the December 2004 interim final rule, NHTSA again amended the ''Application'' section to delay the compliance dates for FMVSS Nos. 403 and 404. In the December 2004 interim final rule, the agency inadvertently deleted the changes made in the October 2004 final rule. The changes to the ''Application'' sections in the December 2004 interim final rule were intended solely to delay the effective date. The agency did not discuss changing or intend to change the types of platform lifts or vehicles to which FMVSS Nos. 403 and 404 apply. This final rule corrects this inadvertent change in the applicability of FMVSS Nos. 403 and 404.

C. Height Range Measurements in Edge Guard Test

We are changing the phrase ''less than'' to ''more than'' in two places in the edge guard test in S7.7.4 of FMVSS No. 403. The procedures set forth in paragraphs S7.7.4.3 and S7.7.4.6 specify a range of heights at which the edge guard test requirements are applicable. The requirements are supposed to apply

[10] 75 FR 33515, 33524–5; June 14, 2010.

in a height range extending from 90 mm (3.5 in) above ground to 38 mm (1.5 in) below vehicle floor level. However, the regulatory text sets forth the upper limit as ''less than'' 38 mm (1.5 in) below floor level. In order for the test to be correct, the upper limit should be specified as ''more than'' 38 mm (1.5 in) below floor level—meaning that the platform must be lower in height than 38 mm (1.5 in) below the vehicle floor. Otherwise, the test would only be conducted in two places, as there is unlikely to be any height that is both less than 38 mm (1.5 in) below floor level and 90 mm (3.5 in) above the ground. If that was NHTSA's intent, there would have been no need for the test to be conducted at a range of heights. In order to conduct this test as NHTSA intended, it is necessary that the platform be no higher than 38 mm (1.5 in) below the vehicle floor to ensure deployment of an inner barrier or roll-stop. This final rule amends paragraphs S7.7.4.3 and S7.7.4.6 of FMVSS No. 403 to correct this obvious error.

D. Test Conditions for Inner Roll Stop Test

There was an error in the proposed regulatory text of paragraph S7 in the December 2007 NPRM. Paragraph S7 sets forth which of the test procedures must be performed on a platform lift installed on a vehicle and which may be performed with the lift mounted on a fixture or test jig. The proposed language of paragraph S7 regrouped the handrail test procedure of S7.12 with those tests that must be performed on a vehicle/lift combination. In the proposed regulatory text, we erroneously included the inner roll stop test procedure of S7.8 in both groups of tests. The inner roll stop test procedure must be performed on a lift/vehicle combination as the current regulatory text states. We have corrected this inadvertent error in this final rule.

E. Clarification of Wheelchair Retention and Inner Roll Stop Requirements

In the December 2007 NPRM, the agency proposed amending S6.4.7 to delete the requirement that the wheelchair test device remain upright with all its wheels in contact with the platform surface following impact. Instead, NHTSA proposed to revise S6.4.7 to provide that a wheelchair retention device passes the impact test if, after impact, the wheelchair test device remains supported by the platform surface with none of the axles of its wheels extending beyond the plane perpendicular to the platform reference plane (Figure 1) which passes through the edge of the platform surface that is transverse when entering or exiting the platform from the ground level loading position. We have modified the language to clarify that such a plane would be tangent to the edge of the platform surface. We have made a similar change to the proposed amendment to S6.4.8.3 using the same language in relation to the inner roll stop requirement.

V. November 3, 2005 Interpretation

On November 3, 2005, we issued an interpretation letter related to S7.4 of FMVSS No. 403, addressed to Maxon. The November 2005 interpretation clarified specific procedures that are performed as part of the threshold warning signal test. Although the agency has decided against revising the language of S7.4, we include a discussion of the matter in this document to ensure wide-spread dissemination of the interpretation.

In asking about the threshold warning requirements, the incoming letter suggested that there was an apparent inconsistency between the requirement and the associated test procedure.

The agency responded, explaining, as follows, that the specified test procedure for the threshold warning system is consistent with that requirement:

> As part of FMVSS No. 403, the agency established a threshold warning signal requirement for platform lifts in part to minimize the risk of a lift user backing off a vehicle before a lift is properly positioned. S6.1 of FMVSS No. 403 requires an appropriate threshold warning signal to be activated when any portion of a passenger's body or mobility aid occupies the platform threshold area defined in S4 of that standard, and the platform is more than 25 mm (1 inch) below the vehicle floor reference plane. A platform lift must meet this requirement when tested in accordance with S7.4 of the standard.
>
> In your letter you stated that it is possible to design a threshold warning system that ''will pass a test that is performed as described in S7.4 and not completely fulfill the requirements of S6.1.3''. You described a threshold warning system designed with an optical sensor at the interior boundary of the platform threshold area. You stated that such a system would activate the warning signal only when a passenger is crossing the boundary of the threshold at the same time as the platform is lower than 25 mm from the vehicle floor. You further stated that such a system would not activate a signal if a passenger were completely within the threshold area when the platform reached the specified distance from the vehicle floor. Your letter indicated that you believe that such a system would ''pass'' the test procedure, but not comply fully with the requirement.
>
> A system as you described would not comply with the requirements of S6.1.3 when tested as specified in S7.4. As stated above, S6.1 requires the appropriate warning signal to activate when tested in accordance with S7.4. S7.4.2 specifies that, with the platform lift at the vehicle floor loading position:
>
> [P]lace one front wheel of the unloaded wheelchair test device [specified in S7.1.2] on any portion of the threshold area defined in S4. Move the platform down until the alarm is actuated. Remove the test wheelchair wheel from the threshold area to deactivate the alarm. Measure the vertical distance between the platform and the threshold area and determine whether that distance is greater than 25 mm (1 in).
>
> Thus, S7.4.2 specifies placing the front wheel of the test device on any portion of the threshold area. As explained in 49 CFR 571.4, the use of the term ''any'' in connection with a range of values or set of items means generally, ''the totality of the items or values, any one of which may be selected by the [agency] for testing''. Accordingly, the procedure specified in S7.4.2 includes placement of the front wheel that could result in the entire test device being within the threshold area prior to the platform being lowered. This also includes placement that results in a portion of the test device being on the platform.
>
> Given the discussion above, a system such as you described would not comply when tested under S7.4.2. As such, there is no discrepancy between the requirement of S6.1.3 and the test procedure specified in S7.4.

VI. Compliance Date

The amendments made by this final rule are mandatory for purposes of compliance 180 days after publication of this final rule. Optional compliance is permitted immediately upon publication of the final rule. We believe these dates are appropriate given that the amendments are for the purpose of clarifying the requirements of the standard and providing further flexibility in compliance.

VII. Rulemaking Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

NHTSA has considered the impacts of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This action was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not ''significant'' under them. This rulemaking document was not reviewed under E.O. 12866.

This document makes amendments to FMVSS Nos. 403 and 404 to clarify the requirements of the standard and to

provide further flexibility in compliance. The impacts of the amendments are so minimal that a full regulatory evaluation is not required. Readers who are interested in the overall costs and benefits of the platform lift requirements are referred to the agency's Final Economic Assessment for the December 2002 final rule (Docket No. NHTSA–2002–13917–3). The amendments made by this document will not change the costs and benefits in a quantifiable manner.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR Part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' (13 CFR 121.105(a)). No regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the effects of this final rule under the Regulatory Flexibility Act. I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not impose new requirements but instead amends FMVSS Nos. 403 and 404 to clarify the requirements of the standards and to provide further flexibility in compliance.

Executive Order 13132 (Federalism)

NHTSA has examined today's rule pursuant to Executive Order 13132 (64 FR 43255, August 10, 1999) and concluded that no additional consultation with States, local governments or their representatives is mandated beyond the rulemaking process. The agency has concluded that the rulemaking does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The rule does not have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

NHTSA rules can preempt in two ways. First, the National Traffic and Motor Vehicle Safety Act contains an express preemption provision:

> When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter. 49 U.S.C. 30103(b)(1).

It is this statutory command by Congress that preempts any non-identical State legislative and administrative law addressing the same aspect of performance.

The express preemption provision described above is subject to a savings clause under which ''[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.'' 49 U.S.C. 30103(e). Pursuant to this provision, State common law tort causes of action against motor vehicle manufacturers that might otherwise be preempted by the express preemption provision are generally preserved.

However, the Supreme Court has recognized the possibility, in some instances, of implied preemption of such State common law tort causes of action by virtue of NHTSA's rules, even if not expressly preempted. This second way that NHTSA rules can preempt is dependent upon there being an actual conflict between an FMVSS and the higher standard that would effectively be imposed on motor vehicle manufacturers if someone obtained a State common law tort judgment against the manufacturer, notwithstanding the manufacturer's compliance with the NHTSA standard. Because most NHTSA standards established by an FMVSS are minimum standards, a State common law tort cause of action that seeks to impose a higher standard on motor vehicle manufacturers will generally not be preempted. However, if and when such a conflict does exist—for example, when the standard at issue is both a minimum and a maximum standard—the State common law tort cause of action is impliedly preempted. See *Geier* v. *American Honda Motor Co.,* 529 U.S. 861 (2000).

Pursuant to Executive Order 13132 and 12988, NHTSA has considered whether this rule could or should preempt State common law causes of action. The agency's ability to announce its conclusion regarding the preemptive effect of one of its rules reduces the likelihood that preemption will be an issue in any subsequent tort litigation. To this end, the agency has examined the nature (e.g., the language and structure of the regulatory text) and objectives of today's rule and finds that this rule, like many NHTSA rules, prescribes only a minimum safety standard. As such, NHTSA does not intend that this rule preempt State tort law that would effectively impose a higher standard on motor vehicle manufacturers than that established by today's rule. Establishment of a higher standard by means of State tort law would not conflict with the minimum standard adopted here. Without any conflict, there could not be any implied preemption of a State common law tort cause of action.

Executive Order 12988 (Civil Justice Reform)

With respect to the review of the promulgation of a new regulation, section 3(b) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4729, February 7, 1996) requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Pursuant to this Order, NHTSA notes as follows. The issue of preemption is discussed above. NHTSA notes further that there is no requirement that individuals submit a petition for reconsideration or pursue other administrative proceeding before they may file suit in court.

Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health and Safety Risks'' (62 FR 19855, April 23, 1997), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an

environmental, health, or safety risk that the agency has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the agency.

Although this final rule is part of a rulemaking expected to have a positive safety impact on children, it is not an economically significant regulatory action under Executive Order 12866. Consequently, no further analysis is required under Executive Order 13045.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. There is no information collection requirement associated with this final rule.

National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), ''all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.''

As discussed in the preamble to the December 2002 final rule, the equipment standard was drafted to include or exceed all existing government (FTA, ADA) and voluntary industry (e.g., SAE) standards.[11] Readers who are interested in the source of the requirements in FMVSS No. 403 are referred to that document. The agency included a table showing the source of each requirement in FMVSS No. 403.

This document is not imposing new requirements, but is instead amending FMVSS Nos. 403 and 404 to clarify the requirements of the standards and to provide further flexibility in compliance. As discussed in the December 2007 NPRM, the proposal to amend S4.1.5 of FMVSS No. 404 to reduce the required platform illumination levels to those specified by the ADA and FTA is consistent with the NTTAA.[12]

[11] 67 FR 79416, 79438; December 27, 2002.

[12] 72 FR 72326, 72333; December 20, 2007.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires the agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the agency to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation of why that alternative was not adopted.

This final rule will not result in any expenditure by State, local, or tribal governments or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Regulatory Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov.*

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA hereby amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.3 is amended by revising the definition of ''motor home'' in paragraph (b) to read as follows:

§ 571.3 Definitions.

* * * * *

Motor home means a multipurpose passenger vehicle with motive power that is designed to provide temporary residential accommodations, as evidenced by the presence of at least four of the following facilities: Cooking; refrigeration or ice box; self-contained toilet; heating and/or air conditioning; a potable water supply system including a faucet and a sink; and a separate 110–125 volt electrical power supply and/or propane.

* * * * *

■ 3. Section 571.403 is amended by revising paragraphs S3, S6.1.4, S6.1.6, S6.4.7.1, S6.4.8.3(a), S6.7.4, S6.7.6.2, S6.10.2.4, S6.10.2.5, S6.10.2.6, S6.10.2.7, S7, S7.4.2, S7.5, S7.5.1, S7.6, S7.6.1, S7.6.2, S7.6.3, S7.7.2.4, S7.7.2.5, S7.7.4.3, S7.7.4.6, S7.8.3, and Figure 2; by removing paragraphs S7.5.2 and S7.5.3; and by adding new paragraphs S7.5.1.1 and S7.5.1.2 to read as follows:

§ 571.403 Standard No. 403; Platform lift systems for motor vehicles.

* * * * *

S3 *Application.* This standard applies to platform lifts manufactured on and after April 1, 2005, that are designed to carry standing passengers, who may be aided by canes or walkers, as well as persons seated in wheelchairs, scooters, and other mobility aids, into and out of motor vehicles.

* * * * *

S6.1.4 The visual warning required by S6.1.2 and S6.1.3 must be a flashing red beacon as defined in SAE Recommended Practice J578 (1995) (incorporated by reference, see § 571.5), must have a minimum intensity of 20

candela, a frequency from 1 to 2 Hz, and must be located within the interior of the vehicle such that it is visible from a point 914 mm (3 ft) above the center of the threshold area (see Figure 2) wherever the lift is installed and with any configuration of the vehicle interior.

* * * * *

S6.1.6 The intensity of the audible warning and visibility of the visual warning required by S6.1.2 and S6.1.3 is measured/observed at a location 914 mm (3 ft) above the center of the platform threshold area. (See Figure 2).

* * * * *

S6.4.7.1 *Impact I.* Except for platform lifts designed so that platform loading takes place wholly over the vehicle floor, the lift must have a means of retaining the test device specified in S7.1.2. After impact, the test device must remain supported by the platform surface with none of the axles of its wheels extending beyond a plane that is perpendicular to the platform reference plane (Figure 1) and that is tangent to the edge of the platform that is traversed when entering or exiting the platform from the ground level loading position throughout its range of passenger operation, except as provided in S6.4.7.4. The lift is tested in accordance with S7.7 to determine compliance with this section.

* * * * *

S6.4.8.3 * * *

(a) The front wheels of the test device specified in S7.1.2 from extending beyond a plane that is perpendicular to the platform reference plane (Figure 1) and that is tangent to the edge of the platform where the roll stop is located when the lift is at ground level loading position; and

* * * * *

S6.7.4 Except for the POWER function described in S6.7.2.1, the control system specified in S6.7.2 must prevent the simultaneous performance of more than one function. If an initial function is actuated, then one or more other functions are actuated while the initial function remains actuated, the platform must either continue in the direction dictated by the initial function or stop. Verification of this requirement is made throughout the lift operations specified in S7.9.3 through S7.9.8.

* * * * *

S6.7.6.2 *Public use lifts.* Public-use lift controls located within the portion of the passenger compartment specified in S5.3.4(a) of Standard No. 101 (§ 571.101) must have characters that are illuminated in accordance with S5.3 of Standard No. 101 when the vehicle's headlights are illuminated. Public-use lift controls located outside the portion of the passenger compartment specified in S5.3.4(a) of Standard No. 101 (§ 571.101) must have means for illuminating the characters to make them visible under daylight and nighttime conditions.

* * * * *

S6.10.2.4 Movement of the platform up or down, throughout the range of passenger operation, unless the inner roll stop required to comply with S6.4.8 is deployed. When the platform reaches a level where the inner roll stop is designed to fully deploy, the platform must stop unless the inner roll stop has fully deployed. Verification with this requirement is made by performing the test procedure specified in S7.6.1.

S6.10.2.5 Movement of the platform up or down, throughout the range of passenger operation, when the highest point of the platform surface at the outer most platform edge is above a horizontal plane 75 mm (3 in) above the ground level loading position, unless the wheelchair retention device required to comply with S6.4.7 is deployed throughout the range of passenger operations. Verification of compliance is made using the test procedure specified in S7.5.1.

S6.10.2.6 In the case of a platform lift that is equipped with an outer barrier, vertical deployment of the outer barrier when it is occupied by portions of the passenger's body or mobility aid throughout the lift operation. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in S7.5.1.

S6.10.2.7 Vertical deployment of the inner roll stop required to comply with S6.4.8 when it is occupied by portions of a passenger's body or mobility aid throughout the lift operations. When the platform stops, the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop or platform edge) must not be greater than 13 mm (0.5 in). Verification of compliance with this requirement is made using the test procedure specified in S7.6.1.

* * * * *

S7 *Test conditions and procedures.* Each platform lift must be capable of meeting all of the tests specified in this standard, both separately, and in the sequence specified in this section. The tests specified in S7.4, S7.7.4 and S7.8 through S7.12 are performed on a single lift and vehicle combination. The tests specified in S7.2, S7.3, S7.5, S7.6, S7.7.1, S7.13, and S7.14 may be performed with the lift installed on a test jig rather than on a vehicle. Tests of requirements in S6.1 through S6.11 may be performed on a single lift and vehicle combination, except for the requirements of S6.5.3. Attachment hardware may be replaced if damaged by removal and reinstallation of the lift between a test jig and vehicle.

* * * * *

S7.4.2 During the threshold warning test, the wheelchair test device may be occupied by a human representative of a 5th percentile female meeting the requirements of FMVSS 208, S29.1(f) and S29.2. If present, the human subject is seated in the wheelchair test device with his or her feet supported by the wheelchair foot rests which are adjusted properly for length and in the down position (not elevated). The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different test option for the lift. Maneuver the lift platform to the vehicle floor level loading position. Using the wheelchair test device specified in S7.1.2, place one front wheel of the wheelchair test device on any portion of the threshold area defined in S4. Move the platform down until the alarm is actuated. Remove the test wheelchair wheel from the threshold area to deactivate the alarm. Measure the vertical distance between the platform and the threshold area and determine whether that distance is greater than 25 mm (1 in).

* * * * *

S7.5 *Outer barrier non-deployment interlock and occupied outer barrier interlock test.*

S7.5.1 Determine compliance with both S6.10.2.5 and S6.10.2.6 by using the following single test procedure.

S7.5.1.1 Place the test jig or vehicle on which the lift is installed on a flat, level, horizontal surface. Maneuver the platform to the ground level loading position. Using the lift control, move the lift upward until the point where the outer barrier fully deploys. Stop the platform at that point and measure the vertical distance between the highest point on the platform surface at the outer most edge and the ground to determine whether the distance is greater than 75 mm (3 in). Reposition the platform in the ground level loading position. Locate the wheelchair test device specified in S7.1.2 on the platform. If other wheelchair retention devices (e.g., a belt retention device) prevent the front wheel of the

wheelchair test device from accessing the outer barrier when on the platform, the wheelchair test device may be placed on the ground facing the entrance to the lift, with other retention devices configured so that they do not prevent lift operation (e.g., with any belt retention device fastened or buckled).

S7.5.1.2 Place one front wheel of the wheelchair test device on any portion of the outer barrier. If the platform is too small to maneuver one front wheel on the outer barrier, two front wheels may be placed on the outer barrier. Note the distance between a horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) and the ground. Using the lift control, move the platform up until it stops. Measure the vertical distance between the highest point of the platform surface at the outer most edge and the ground to determine compliance with S6.10.2.5. Measure the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the outer barrier) to determine compliance with S6.10.2.6.

S7.6 *Inner roll stop non-deployment interlock and occupied inner roll stop interlock test.*

S7.6.1 Determine compliance with both S6.10.2.4 and S6.10.2.7 by using the single test procedure in S7.6.2 and S7.6.3.

S7.6.2 Maneuver the platform to the vehicle floor level loading position, and position the wheelchair test device specified in S7.1.2 on the platform with the front of the wheelchair test device facing the vehicle. Using the lift control, move the platform down until the inner roll stop fully deploys. Stop the lift and note that location.

S7.6.3 Reposition the platform at the vehicle floor level loading position. Place one front wheel of the wheelchair test device on the inner roll stop. If the platform is too small to maneuver one front wheel on the inner roll stop, two front wheels may be placed on the inner roll stop. Note the vertical distance between a horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop) and the ground. Using the lift control, move the platform down until it stops. Compare the location of the platform relative to the location noted in S7.6.2 to determine compliance with S6.10.2.4. Measure the vertical change in distance of the horizontal plane (passing through the point of contact between the wheelchair test device wheel(s) and the upper surface of the inner roll stop) to determine compliance with S6.10.2.7.

* * * * *

S7.7.2.4 An optional 50 kg (110 pounds) of weight may be centered, evenly distributed, and secured in the seat of the wheelchair test device to assist in stabilizing the wheelchair test device during testing. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different test option for the lift. Accelerate the test device onto the platform under its own power such that the test device impacts the wheelchair retention device at each speed and direction combination specified in S7.7.2.5. Terminate power to the wheelchair test device by means of the wheelchair controller after completion of the initial impact of any portion of the wheelchair test device with the wheelchair retention device. Note the position of the wheelchair test device following each impact to determine compliance with S6.4.7. If necessary, after each impact, adjust or replace the footrests to restore them to their original condition.

S7.7.2.5 The test device is operated at the following speeds, in the following directions—

(a) At a speed of not less than 2.0 m/s (4.4 mph) and not more than 2.1 m/s (4.7 mph) in the forward direction.

(b) At a speed of not less than 1.75 m/s (3.9 mph) and not more than 1.85 m/s (4.1 mph) in the rearward direction.

* * * * *

S7.7.4.3 Adjust the control of the test device to a setting that provides maximum acceleration and steer the test device from side-to-side and corner-to-corner of the lift platform, attempting to steer the test device off the platform. After each attempt, when the wheelchair test device stalls due to contact with a barrier, release the control to Neutral and realign the test device to the starting position. Repeat this sequence at any level that is more than 90 mm ±10 mm (3.5 in ±0.4 in) above the ground level loading position and more than 38 mm ±10 mm (1.5 in ±0.4 in) below the vehicle floor level loading position. Repeat this sequence at 38 mm ±10 mm (1.5 in ±0.4 in) below the vehicle floor level loading position.

* * * * *

S7.7.4.6 Adjust the control of the test device to a setting that provides maximum acceleration and steer the test device from side-to-side and corner-to-corner of the lift platform, attempting to steer the test device off the platform. After each attempt, when the wheelchair test device stalls due to contact with a barrier, release the control to Neutral and realign the test device to the starting position. Repeat this sequence at any level that is more than 90 mm ±10 mm (3.5 in ±0.4 in) above the ground level loading position and more than 38 mm ±10 mm (1.5 in ±0.4 in) below the vehicle floor loading position. Repeat this sequence at 38 mm ±10 mm (1.5 in ±0.4 in) below the vehicle floor level loading position.

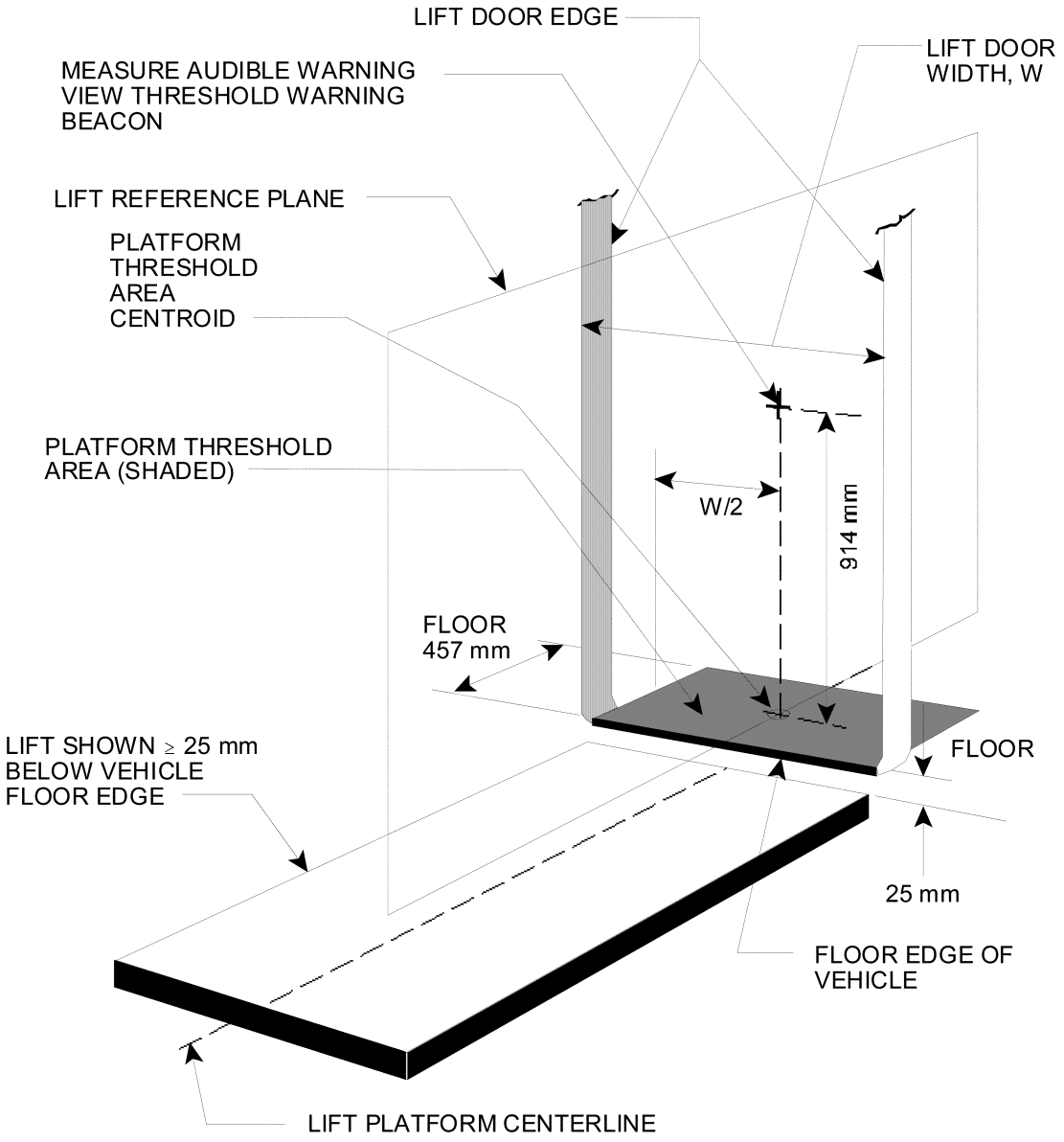
* * * * *

S7.8.3 An optional 50 kg (110 pounds) of weight may be centered, evenly distributed, and secured in the seat of the wheelchair test device to assist in stabilizing the wheelchair test device during testing. The manufacturer shall select the option by the time it certifies the lift and may not thereafter select a different test option for the lift. Accelerate the test device onto the platform such that it impacts the inner roll stop at a speed of not less than 1.5 m/s (3.4 mph) and not more than 1.6 m/s (3.6 mph). Terminate power to the wheelchair test device by means of the wheelchair controller after completion of the initial impact of any portion of the wheelchair test device with the inner roll stop. Determine compliance with S6.4.8.3(a).

* * * * *

BILLING CODE 4910–59–P

FIGURE 2



PLATFORM THRESHOLD AREA AUDIBLE WARNING MEASUREMENT POINT

FIGURE 2

* * * * *

■ 4. Section 571.404 is amended by revising paragraphs S3 and S4.1.5 to read as follows:

§ 571.404 Standard No. 404; Platform lift installations in motor vehicles.

* * * * *

S3 *Application.* This standard applies to motor vehicles manufactured on and after July 1, 2005, that are equipped with a platform lift designed to carry standing passengers who may be aided by canes or walkers, as well as persons seated in wheelchairs, scooters, and other mobility aids, into and out of the vehicle.

* * * * *

S4.1.5 *Platform Lighting on public use lifts.* Public-use lifts must be provided with a light or set of lights that provide at least 22 lm/m² or 22 Lux (2 lm/ft² or 2 foot-candles) of illumination on all portions of the surface of the platform when the platform is at the vehicle floor level. Additionally, a light or set of lights must provide at least 11 lm/m² or 11 Lux (1 lm/ft² or 1 foot-candle) of illumination on all portions of the surface of the platform and all portions of the surface of the passenger-unloading ramp at ground level. In preparation for taking illumination measurements, operate the vehicle engine by idling or driving the test vehicle, with the vehicle's HVAC system turned off, for a minimum of 20 minutes, after which the engine is turned off. Illumination measurements are then recorded no later than 10 minutes after the time the engine is turned off, with the vehicle in a location where there is no apparent ambient light, and with the sensing element of the measuring device within 50 mm (2 inches) of the platform surface being measured.

* * * * *

Issued on: March 28, 2012.

David L. Strickland,

Administrator.

[FR Doc. 2012–8138 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 111207737–2141–02]

RIN 0648–XB119

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels (CVs) using hook-and-line gear in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2012 Pacific cod total allowable catch apportioned to CVs using hook-and-line gear in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 2, 2012, through 1200 hrs, A.l.t., September 1, 2012.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679. Regulations governing sideboard protections for GOA groundfish fisheries appear at subpart B of 50 CFR part 680.

The A season allowance of the 2012 Pacific cod total allowable catch (TAC) apportioned to CVs using hook-and-line gear in the Western Regulatory Area of the GOA is 145 metric tons (mt), as established by the final 2012 and 2013 harvest specifications for groundfish of the GOA (77 FR 15194, March 14, 2012).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the A season allowance of the 2012 Pacific cod TAC apportioned to CVs using hook-and-line gear in the Western Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 130 mt, and is setting aside the remaining 15 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by CVs using hook-and-line gear in the Western Regulatory Area of the GOA. After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Acting Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by CVs using hook-and-line gear in the Western Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of March 30, 2012.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2012.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2012–8222 Filed 4–2–12; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 77, No. 66
Thursday, April 5, 2012

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2012–0332; Directorate Identifier 2011–NM–130–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 and Model Avro 146–RJ airplanes. This proposed AD was prompted by reports of cracking and surface anomalies of the fuselage skin at the water trap/air drier unit of the forward discharge valve due to corrosion. This proposed AD would require repetitive detailed inspections for bulging, surface anomalies, and cracking of the fuselage skin adjacent to the discharge valves, repair if necessary, and application of additional sealant in the affected area if necessary. We are proposing this AD to detect and correct bulging, surface anomalies, and cracking that could propagate towards the forward discharge valve outlet and result in the failure of the fuselage skin, leading to a possible sudden loss of cabin pressure.

DATES: We must receive comments on this proposed AD by May 21, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact BAE SYSTEMS (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2012–0332; Directorate Identifier 2011–NM–130–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0099, dated May 26, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> An operator has reported the cracking and surface anomalies (bulges and/or dents) of the fuselage skin at the water trap/air drier unit of the forward discharge valve located between Frames 22 and 23 and between stringers 22 and 23.
>
> Further investigation established that these surface anomalies (bulges and/or dents) were due to corrosion beneath the water trap/air drier unit that has resulted in cracking of the fuselage skin. A crack at the subject location could propagate towards the forward discharge valve outlet and result in the failure of the fuselage skin leading to a possible sudden loss of cabin pressure.
>
> For the reasons described above, this [EASA] AD mandates an initial and repetitive [detailed] inspections [for bulging, surface anomalies, and cracking] of the fuselage skin adjacent to the front and rear discharge valves, the accomplishment of the associated correctives actions [repair] if applicable and the application of an additional sealant in the affected area.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

BAE SYSTEMS (OPERATIONS) LIMITED has issued Inspection Service Bulletin ISB.21–162, Revision 1, dated September 16, 2010; Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 100–200, Revision 66, dated October 15, 2011; and Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 300, Revision 44, dated October

15, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 1 product of U.S. registry. We also estimate that it would take about 8 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $680, or $680 per product. We have received no definitive data that would enable us to provide cost estimates for the on-condition (repair) actions specified in this proposed AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

BAE Systems (Operations) Limited: Docket No. FAA–2012–0332; Directorate Identifier 2011–NM–130–AD.

(a) Comments Due Date

We must receive comments by May 21, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146–100A, –200A airplanes, and –300A and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category; all models, and all serial numbers except airplanes that have incorporated auto-pressurization modification HCM50259A during production.

(d) Subject

Air Transport Association (ATA) of America Code 21: Air Conditioning.

(e) Reason

This AD was prompted by reports of cracking and surface anomalies of the fuselage skin at the water trap/air drier unit of the forward discharge valve due to corrosion. We are issuing this AD to detect and correct bulging, surface anomalies, and cracking that could propagate towards the forward discharge valve outlet and result in the failure of the fuselage skin, leading to a possible sudden loss of cabin pressure.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Detailed Inspection of External Fuselage Skin

Within 12 months after the effective date of this AD, do a detailed inspection to check for bulging, surface anomalies, and cracking of the fuselage skin adjacent to the discharge valve outlets (one frame fore and aft, one stringer above and below), in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.21–162, Revision 1, dated September 16, 2010. Repeat the inspection thereafter at intervals not to exceed 24 months.

(1) If any bulging, surface anomalies, or cracking of the fuselage skin is found to be within the criteria defined in Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 100–200, Revision 66, dated October 15, 2011 (for Model 146–100A and –200A, and Avro 146–RJ70A and 146–RJ85A airplanes); or Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAe SYSTEMS BAE 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 300, Revision 44, dated October 15, 2011 (for Model 146–300A and Avro 146–RJ100A airplanes): Before further flight, repair the damage, in accordance with the Accomplishment Instructions specified in BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.21–162, Revision 1, dated September 16, 2010.

(2) If any bulging, surface anomalies, or cracking of the fuselage skin is found exceeding the criteria as specified by Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 100–200, Revision 66, dated October 15, 2011 (for Model 146–100A and –200A, and Avro 146–RJ70A and 146–RJ85A airplanes); or Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAE 146/AVRO 146–RJ Series Structural Repair Manual for Series 300, Revision 44, dated October 15, 2011 (for Model 146–300A and Avro 146–RJ100A airplanes): Before further flight, repair the condition according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or EASA (or its delegated agent).

(h) Application of Sealant

Within 24 months after the effective date of this AD, unless a repair has already been accomplished in accordance with paragraph (g) of this AD: Apply additional PR1422A–2 or PR1764–2 edge sealant between the water trap/air drier and the fuselage skin, in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.21–162, Revision 1, dated September 16, 2010. Application of additional sealant does not constitute terminating actions for the repetitive detailed inspection required by paragraph (g) of this AD. Accomplishment of a repair as required by paragraph (g) of this AD terminates the repetitive inspection requirements of this AD.

(i) Credit for Previous Actions

(1) This paragraph provides credit for inspections and sealant applications required by paragraphs (g) and (h) of this AD, if those actions were performed using the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.21–162, dated June 7, 2010.

(2) This paragraph provides credit for using criteria defined in the following subject of the applicable structural repair manual, as required by paragraphs (g)(1) and (g)(2) of this AD, if that criteria was used before the effective date of this AD using Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 100–200, Revision 65, dated September 15, 2010 (for Model 146–100A and –200A, and Avro 146–RJ70A and 146–RJ85A airplanes); or Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 300, Revision 43, dated September 15, 2010 (for Model 146–300A and Avro 146–RJ100A airplanes).

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone 425–227–1175; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(k) Related Information

Refer to MCAI EASA Airworthiness Directive 2011–0099, dated May 26, 2011, and the service information identified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD, for related information.

(1) BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.21–162, Revision 1, dated September 16, 2010.

(2) Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 100–200, Revision 66, dated October 15, 2011.

(3) Subject 53–00–00, ''Fuselage, General Description,'' of Chapter 53, ''Fuselage,'' of the BAE SYSTEMS BAe 146 Series/AVRO 146–RJ Series Structural Repair Manual for Series 300, Revision 44, dated October 15, 2011.

Issued in Renton, Washington, on March 28, 2012.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2012–8128 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0007]

30 CFR Part 1206

Notice of Meeting for the Indian Oil Valuation Negotiated Rulemaking Committee

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of meetings.

SUMMARY: The Office of Natural Resources Revenue (ONRR) announces meetings for the Indian Oil Valuation Negotiated Rulemaking Committee (Committee). Agenda items for the first meetings of the Committee will include (1) an overview of Indian oil production, the current Indian oil valuation rule, and the Indian oil royalty administrative process; (2) an identification of issues to be addressed by the Committee; and (3) an opportunity for members to express their issues, concerns and interests. In addition, the Committee's facilitator will review meeting protocols and facilitate a discussion of collaborative problem solving. The Committee membership includes representatives from Indian Tribes, individual Indian mineral owner organizations, the oil and gas industry, and the Department of the Interior. The public will have the opportunity to comment between 3:45 p.m. and 4:45 p.m. mountain standard time on May 1, 2012, and June 18, 2012.

DATES: Tuesday and Wednesday, May 1 and 2, 2012 and Monday and Tuesday, June 18 and 19, 2012. Both meetings will run from 8:30 a.m. to 5 p.m. mountain standard time on both days.

ADDRESSES: ONRR will hold the meetings at the Denver Federal Center, 6th Ave and Kipling, Bldg. 85 Auditorium, Lakewood, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Wunderlich, ONRR, at (303) 231–3663; or (303) 231–3194 via fax; or email at *karl.wunderlich@onrr.gov.*

SUPPLEMENTARY INFORMATION: ONRR formed the Indian Oil Valuation Negotiated Rulemaking Committee on December 8, 2011, to develop specific recommendations regarding proposed revisions to the existing regulations for oil production from Indian leases, especially the major portion requirement. The Committee includes representatives of parties who will be affected by the final rule. It will act solely in an advisory capacity to ONRR and will neither exercise program management responsibility nor make decisions directly affecting the matters on which it provides advice.

Meetings are open to the public without advanced registration on a space-available basis. Transcripts of this meeting will be available for public inspection and copying at our offices in Building 85 on the Denver Federal Center in Lakewood, Colorado. These meetings are conducted under the authority of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 1).

Dated: March 29, 2012.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2012–8186 Filed 4–4–12; 8:45 am]

BILLING CODE 4310–T2–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2011–0501; FRL–9655–4]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Forest County Potawatomi Community Reservation Class I Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On May 12, 2011, the Wisconsin Department of Natural Resources (WDNR) submitted provisions affecting the Forest County Potawatomi Community (FCP Community) Class I Area for approval into the Wisconsin State Implementation Plan (SIP). The provisions include the regulation of sources constructing near the newly designated Class I Area, as well as procedures that the FCP Community must follow when providing a demonstration regarding a source that may have an adverse impact on the Class I Area. In this action, EPA proposes to approve the provisions into Wisconsin's SIP.

DATES: Comments must be received on or before May 7, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2011–0501, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: damico.genevieve@epa.gov.*
3. *Fax:* (312) 582–5146.
4. *Mail:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2011–0501. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Danny Marcus, Environmental Engineer, at (312) 353–8781 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Danny Marcus, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8781, *marcus.danny@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

1. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

2. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

3. Describe any assumptions and provide any technical information and/or data that you used.

4. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

5. Provide specific examples to illustrate your concerns, and suggest alternatives.

6. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

7. Make sure to submit your comments by the comment period deadline identified.

II. Background

Redesignation of the Forest County Potawatomi Community

On April 29, 2008, at 73 FR 23086, the Administrator granted the application of the FCP Community to obtain Class I redesignation of certain reservation lands from ''Class II'' to ''Class I'' under the Clean Air Act's (CAA) Prevention of Significant Deterioration (PSD) Program. This rulemaking redesignated to Class I status lands held in trust for the FCP Community. At the same time, EPA published two actions resolving disputes with Wisconsin and Michigan under the CAA, in which those states had challenged the FCP Community's application for Class I redesignation. The history of these dispute resolutions is discussed in detail in EPA's April 29, 2008, actions for the resolution of these two matters at 73 FR 23107 and 73 FR 23111. The dispute resolution reached by Wisconsin and the FCP Community was formalized in a Memorandum of Agreement (MOA) which was signed in 1999.

The FCP Community and the State of Wisconsin Memorandum of Agreement

The 1999 MOA provided a framework for establishing how the State and FCP Community would implement the Class I Area under their respective authorities. The provisions of the agreement became effective upon EPA's final action to approve the FCP Community's request for Class I redesignation. While EPA also was a signatory to the agreement, EPA's role in the process was to acknowledge the agreement entered into by the parties on their own respective authorities.

Section 164(e) of the CAA, provides that ''If the [state and the Indian Tribe] do not reach agreement, the Administrator shall resolve the dispute and his determination or the results of the agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan.'' CAA section 164(e), 42 U.S.C. 7474(e). The PSD program is implemented in Wisconsin under an EPA approved SIP that excludes all of Indian country within the State. Because the terms of the MOA set out requirements for sources locating outside the Class I Area, it is appropriate to implement these requirements through the SIP which applies to all areas excluding Indian country in Wisconsin. 73 FR 23114. These revisions are the subject of today's proposal.

Pursuant to the MOA, all major sources in Wisconsin that are located within a 10-mile radius of any redesignated FCP land must perform a Class I increment analysis and must meet the increment consumption requirements applicable to a Class I Area. Major sources located beyond the 10-mile distance from redesignated lands must perform a Class II increment analysis and comply with the consumption requirements applicable to a Class II Area. Additionally, all major sources within 62 miles of the FCP Community's Class I redesignated area must determine by an analysis whether their emissions will have an adverse impact on those Air Quality Related Values (AQRV) associated with that Class I Area.

EPA takes the position that it generally will not interfere with the agreements reached between tribes and states through the CAA's section 164(e) dispute resolution process. However, to the extent that the agreement reached under the terms of the MOA allows for restricting the requirements normally associated with Class I areas as these apply to sources located outside a 10-mile radius of the redesignated reservation lands, EPA takes the position that a revision of the Wisconsin SIP is necessary to implement these provisions for potential sources located outside the boundaries of the redesignated parcels. In the absence of such modification to the Wisconsin SIP, the current PSD rules will apply to sources locating outside the Class I Area, and the provisions of the MOA would lack enforceability.

Between 2008 and 2010, representatives from the FCP Community, WDNR, and EPA met and held discussions to determine how to translate the general principles of the MOA into implementable regulations. These discussions covered definition of the areas within which sources would be required to conduct the Class I and Class II increment analyses, notification procedures, and a state-tribal dispute resolution mechanism. Representatives for the FCP Community and WDNR then worked together to develop the necessary regulatory provisions.

III. What changes is EPA proposing to approve?

The regulatory revisions that Wisconsin has submitted for EPA's approval include defining the geographic center of the FCP Community Class I Area for purposes of air quality management. Additionally, proposed new major sources or major modifications of existing sources locating within 22.25 miles of the geographic center of the FCP Community Class I Area must conduct a Class I increment analysis and are subject to Class I consumption limits.

Proposed new major sources or major modifications of existing sources locating outside 22.25 miles of the geographic center of the FCP Community Class I Area must conduct a Class II increment analysis and are subject to Class II consumption limits. The rules also include procedures for the FCP Community to coordinate with the state regarding comments on sources potentially impacting the Class I Area and to make a demonstration to the state that a proposed source may have an adverse effect on AQRVs. Finally, the rules provide the FCP Community with the opportunity to review certain best available control technology (BACT) and maximum achievable control technology (MACT) determinations made by the State, and provide a dispute resolution mechanism for resolving disagreements regarding BACT or MACT determinations for certain new or modified sources. The rules proposed for approval are as follows:

NR 400.02 (66m) ''Forest County Potawatomi Community Class I Area'' or ''FCPC Class I Area''

Means those land parcels of the Forest County Potawatomi Reservation that are designated as a non-Federal Class I Area by EPA under 40 CFR 52.2581. The FCP Community Class I Area has a geographic center, as determined by the department, at latitude 45.49978° N, longitude 88.64377° W.

NR 405.19 ''Forest County Potawatomi Class I Area.''

(1) For any new major source or major modification of an existing source, the FCP Community shall have the opportunity to present to the department, within no more than 75 days of receipt of a complete permit application by the department, a demonstration that the emissions from the proposed new major source or major modification would have an adverse impact on the established air quality related values of the FCP Community Class I Area.

(2) New major sources or major modifications of existing sources wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCP Community Class I Area, as identified in s. NR 400.02 (66m), are subject to an increment analysis and limited to the maximum allowable increase levels of a Class I Area.

(3) New major sources or major modifications of existing sources locating or located wholly outside the area defined in sub. (2) are subject to an increment analysis and maximum allowable increase levels of a Class II Area.

NR 406.08 ''Action on permit applications.''

(4)(a) The FCP Community shall have the opportunity to review BACT or MACT determinations made by the department for any new or modified source that is either of the following:

1. Wholly or partially locating or located within a radius of 22.25 miles from the geographic center of the FCP Community Class I Area, as identified in s. NR 400.02 (66m).

2. Wholly or partially locating or located within 62 miles of the FCP Community Class I Area, and has a modeled impact exceeding 1 microgram per cubic meter averaged over any 24-hour period for mercury or for any regulated pollutant that has an ambient air quality standard in s. NR 404.04.

(b) Disagreements between the department and the FCP Community regarding BACT or MACT determinations are subject to dispute resolution but the department shall act

on a permit application according to time period requirements under ss. 285.61 and 285.62, Stats.

IV. What action is EPA taking?

EPA is proposing to approve Wisconsin's May 12, 2001, submittal, relating to provisions impacting the FCP Community Class I Area. Specifically, Wisconsin's submittal defines the geographic center of the FCP Community Class I Area, establishes requirements for sources which may potentially impact the FCP Community Class I Area, provides the FCP Community the opportunity to review certain BACT and MACT determinations, and establishes a dispute resolution process for issues that may arise between the FCP Community and the State. The provisions proposed for approval into Wisconsin's SIP include: NR 400.02(66m), NR 405.19, and NR 406.08(4).

EPA has made the preliminary determination that the SIP submittal is approvable because EPA takes the position that it generally will not interfere with the agreements reached between Tribes and States through the CAA's section 164(e) dispute resolution process, which provides that the results of such agreements will become part of the appropriate applicable plan. EPA's 2008 rulemaking anticipated that revisions to the Wisconsin SIP would be needed to fully implement the 1999 MOA between the State and the FCP Community.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. In May 2011, EPA issued its policy on consultation and coordination with Indian tribes. EPA explained that its policy is to consult on a government-to-government basis with Federally recognized tribal governments when EPA actions and decisions may affect tribal interests. Accordingly, EPA engaged in consultation with the FCP Community regarding the Wisconsin proposed SIP revisions.

The Wisconsin proposed SIP revisions which define the FCP Community's Class I Area, and which define those sources that are required to conduct Class I and Class II increment analysis, and which provide for the FCP Community's participation in certain BACT or MACT determinations will all enable the FCP Community and Wisconsin to work together to cooperatively implement the FCP Community's Class I Area, which is an integral part of the FCP Community's goal of exercising control over reservation resources to better protect the members of the FCP Community.

In the process of reviewing the proposed Wisconsin SIP revisions, EPA consulted with FCP Community tribal officials to permit them to have meaningful and timely input into the Agency's review. EPA consulted with representatives of the FCP Community prior to proposing to approve the Wisconsin SIP revision. During this consultation, EPA explained the provisions included in the proposed Wisconsin SIP revision and answered questions. EPA intends to keep the FCP Community informed of the progress of this proposed SIP approval.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: March 26, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–8207 Filed 4–4–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2012–0214; FRL–9655–3]

Approval and Promulgation of Air Quality Implementation Plans; Indiana; Central Indiana (Indianapolis) Ozone Maintenance Plan Revision to Approved Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Indiana's request to revise its Central Indiana 1997 8-hour ozone maintenance air quality State Implementation Plan (SIP) by replacing the previously approved motor vehicle emissions budgets (budgets) with budgets developed using EPA's Motor Vehicle Emissions Simulator (MOVES) 2010a emissions model. The Central Indiana 1997 8-hour ozone maintenance area consists of Marion, Boone, Hendricks, Morgan, Johnson, Shelby, Hancock, Madison, and Hamilton Counties in Indiana. Indiana submitted this request to EPA for parallel processing on March 2, 2012.

DATES: Comments must be received on or before May 7, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2012–0214, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: blakley.pamela@epa.gov.*

3. *Fax:* (312) 408–2279.

4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2012–0214. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Patricia Morris, Environmental Scientist at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Environmental Scientist, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656, *patricia.morris@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period.

II. What action is EPA proposing to take?

EPA is proposing to approve new MOVES2010a-based budgets for the Central Indiana 1997 ozone maintenance area. The Central Indiana area was redesignated to attainment of the 1997 8-hour ozone standard on October 19, 2007 (72 FR 59210), and the MOBILE6.2-based budgets were approved in that notice. When EPA finalizes this proposed approval, the newly submitted MOVES2010a budgets will replace the existing, MOBILE6.2-based budgets in the state's 1997 8-hour ozone maintenance plan and must then be used in future transportation conformity analyses for the area. At that time, the previously approved budgets would no longer be applicable for transportation conformity purposes.

When EPA approves the MOVES2010a-based budgets, the Central Indiana 1997 8-hour ozone maintenance area must use the MOVES2010a-based budgets starting on the effective date of that final approval. See 75 FR 9411–9414 for background and section III.c below for details.

III. What is the background for this action?

a. SIP Budgets and Transportation Conformity

Under the Clean Air Act (CAA), states are required to submit, at various times, control strategy SIP revisions and maintenance plans for nonattainment and maintenance areas for a given National Ambient Air Quality Standard (NAAQS). These emission control strategy SIP revisions (e.g., reasonable further progress and attainment demonstration SIP revisions) and maintenance plans include budgets of on-road mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. SIP budgets are the

portions of the total allowable emissions that are allocated to on-road vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance. The budget serves as a ceiling on emissions from an area's planned transportation system. For more information about budgets, see the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188).

Under section 176(c) of the CAA, transportation plans, Transportation Improvement Programs (TIPs), and transportation projects must ''conform'' to (*i.e.,* be consistent with) the SIP before they can be adopted or approved. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS or delay an interim milestone. The transportation conformity regulations can be found at 40 CFR Part 93.

Before budgets can be used in conformity determinations, EPA must affirmatively find the budgets adequate. However, adequate budgets do not supersede approved budgets for the same CAA purpose. If the submitted SIP budgets are meant to replace budgets for the same purpose, as is the case with Indiana's MOVES2010a 1997 8-hour ozone maintenance plan budgets, EPA must approve the budgets, and can affirm that they are adequate at the same time. Once EPA approves the submitted budgets, they must be used by state and Federal agencies in determining whether transportation activities conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of budgets are set out in 40 CFR 93.118(e)(4).

b. Prior Approval of Budgets

EPA had previously approved budgets for the Central Indiana 8-hour ozone maintenance area for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for the years 2006 and 2020 on October 19, 2007 (72 FR 59210). These budgets were based on EPA's MOBILE6.2 emissions model. The ozone maintenance plan established 2006 budgets for the Central Indiana area of 54.32 tons per summer day (tpd) for VOCs and 106.19 tpd for NO_X and 2020 budgets for the Central Indiana Area of 29.52 tpd for VOCs and 35.69 tpd for NO_X. These budgets demonstrated a reduction in emissions from the monitored attainment year and included a margin of safety.

c. The MOVES Emissions Model and Regional Transportation Conformity Grace Period

The MOVES model is EPA's state-of-the-art tool for estimating highway emissions. The model is based on analyses of millions of emission test results and considerable advances in the agency's understanding of vehicle emissions. MOVES incorporates the latest emissions data, more sophisticated calculation algorithms, increased user flexibility, new software design, and significant new capabilities relative to those reflected in MOBILE6.2.

EPA announced the release of MOVES2010 in March 2010 (75 FR 9411). This notice approved the use of MOVES2010 in official SIP submissions to EPA and for regional emissions analyses for transportation conformity purposes outside of California. In addition, the notice started a two-year grace period before MOVES2010 is required to be used in new regional emissions analyses for transportation conformity determinations outside of California. EPA has since extended that grace period until March 2, 2013 (77 FR 11394).

On September 8, 2010, EPA released MOVES2010a, which included minor revisions that enhance model performance and do not significantly affect the criteria pollutant emissions results from MOVES2010. Therefore, MOVES2010a is not considered a ''new model'' under 40 CFR 93.111. As a result, the MOVES2010 grace period for regional conformity analyses applies to the use of MOVES2010a as well.[1]

EPA encouraged Metropolitan Planning Organizations (MPOs), Departments of Transportation, and state air agencies to examine how MOVES would affect future transportation plan and TIP conformity determinations so, if necessary, SIPs and budgets could be revised with MOVES2010 or transportation plans and TIPs could be revised (as appropriate) prior to the end of the regional transportation conformity grace period. EPA also encouraged state and local air agencies to consider how the release of MOVES would affect analyses supporting SIP submissions under development.

The Indianapolis Metropolitan Planning Organization (IMPO) has used MOVES2010a emission rates with the transportation network information to estimate emissions in the years of the transportation plan and also for the SIP. Indiana is revising the budgets at this time using the latest planning assumptions including population and employment updates. In addition, newer vehicle registration data has been used to update the age distribution of the vehicle fleet. Since MOVES2010 (or a minor model revision) will be required for conformity analyses after the grace period ends, Indiana finds that updating the budgets with MOVES2010a will prepare the IMPO for the transition to using MOVES for conformity analyses and determinations. The interagency consultation group has had extensive consultation on the requirements and need for new budgets.

d. Submission of New Budgets Based on MOVES2010a

On March 2, 2012, Indiana submitted for parallel processing replacement budgets based on MOVES2010a for the Central Indiana area. Indiana is currently providing public review and comment at the state level. The state public comment period ends on March 30, 2012. EPA is proposing to approve the MOVES2010a budgets after completion of the public process and formal submittal of the SIP revision request.

The MOVES2010a budgets are proposed to replace the prior approved MOBILE6.2 budgets and are for the same years and pollutants/precursors. The new MOVES2010a budgets are for the years 2006 and 2020 for both VOCs and NO_X. Indiana has also submitted MOVES2010a emissions for the attainment year of 2005 as a comparison to the 2006 and 2020 budget years and for purposes of calculating a safety margin. Table 4.1–A in the submittal demonstrates how mobile source emissions decline from the attainment year of 2005. In 2005, the total estimated NO_X emissions from all sources (including mobile, point, area and non-road sources) is 329.78 tpd and the total VOC emissions, for the 2005 attainment year, from all sources is 207.94 tpd. The 2020 estimated emissions for total NO_X from all sources is 136.59 tpd and the total VOC emissions from all sources is 163.69 tpd. The mobile source emissions, when included with point, area and non-road sources continue to demonstrate maintenance of the attainment level of emissions in the Central Indiana area.

No additional control measures were needed to maintain the 1997 ozone standard emissions in the Central Indiana area. The available safety margin for NO_X and VOCs was recalculated at the bottom of table 4.1–A and an allocation of 10% for NO_X and 12% for VOCs were decided upon during the interagency consultation

[1] For more information, see 77 FR 11394.

process. The on-road MOVES2010a based budgets are in Table 5.2–A of the submittal and are listed as 210.93 tpd for NO_X and 64.32 tpd for VOCs in the year 2006 and 69.00 tpd for NO_X and 25.47 tpd for VOCs in the year 2020. These budgets will continue to keep emissions in the Central Indiana area below the calculated attainment year of emissions.

IV. What are the criteria for approval?

The CAA has always required that revisions to existing SIPs and budgets continue to meet applicable requirements (i.e., reasonable further progress (RFP), attainment, or maintenance). States that revise their existing SIPs to include MOVES budgets must therefore show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions contained in the budgets.

The transportation conformity rule (at 40 CFR 93.118(e)(4)(iv)) requires that ''the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress (RFP), attainment, or maintenance (whichever is relevant to the given implementation plan submission).'' This and the other adequacy criteria found at 40 CFR 93.118(e)(4) must be satisfied before EPA can find submitted budgets adequate or approve them for conformity purposes.

In addition, EPA has stated that areas can revise their budgets and inventories using MOVES without revising their entire SIP if (1) the SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES base year and milestone, attainment, or maintenance year inventories, and (2) the state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP. For example, the first criterion could be satisfied by demonstrating that the emissions reductions between the baseline/attainment year and maintenance year are the same or greater using MOVES than they were previously. The Indiana submittal meets this requirement as described below in section V.

For more information, see EPA's latest ''Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' available online at: *www.epa.gov/otaq/stateresources/transconf/policy.htm#models.*

V. What is EPA's analysis of the State's submittal?

a. The Revised Inventories

The Indiana SIP revision request for Central Indiana 1997 ozone maintenance seeks to revise only the on-road mobile source inventories and not the non-road inventories, area source inventories or point source inventories for the 2006 and 2020 years for which the SIP revises the budgets. IDEM has certified that the control strategies remain the same as in the original SIP, and that no other control strategies are necessary. This is confirmed by the monitoring data for Central Indiana, which continues to monitor attainment for the 1997 8-hour ozone standard. The area is also monitoring attainment for the 2008 8-hour ozone standard. Thus, the current control strategies are continuing to keep the area in attainment of the NAAQS.

EPA has reviewed the emission estimates for point, area and non-road sources and concluded that no major changes to the projections need to be made. The submittal states that ''growth and control strategy assumptions for non-mobile sources (i.e., area, nonroad, and point) from the original submittal for the years 2005, 2010, 2015, and 2020 were developed before the down turn in the economy over the last several years. Because of this, the factors included in the original submittal may project more growth than actual into the future. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2005, 2010, 2015 and 2020 continue to be valid and do not affect the overall conclusions of the plan.''

Indiana confirms that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions from mobile sources) are 329.78 tpd for NO_X and 207.94 tpd for VOCs in the 2005 attainment year. The total emissions from all sources in the 2020 year are 136.59 tpd for NO_X and 163.69 tpd for VOCs. These totals demonstrate that emissions in the Central Indiana area are continuing to decline and remain below the attainment levels.

Indiana has submitted MOVES2010a-based budgets for the Central Indiana area that are clearly identified in Table 5.2–A of the submittal. The budgets for 2006 are 210.93 tpd for NO_X and 64.32 tpd for VOCs. The budgets for 2020 are 69.00 tpd for NO_X and 25.47 tpd for VOCs.

b. Approvability of the MOVES2010a-Based Budgets

EPA is proposing to approve the MOVES2010a-based budgets submitted by the state for use in determining transportation conformity in the Central Indiana 1997 ozone maintenance area. EPA is making this proposal based on our evaluation of these budgets using the adequacy criteria found in 40 CFR 93.118(e)(4) and our in-depth evaluation of the State's submittal and SIP requirements. EPA has determined, based on its evaluation, that the area's maintenance plan would continue to serve its intended purpose with the submitted MOVES2010a-based budgets and that the budgets themselves will meet the adequacy criteria in the conformity rule at 40 CFR 93.118(e)(4) after the state public hearing is completed and the SIP is formally submitted.

EPA is parallel processing this SIP revision request which means that EPA is proposing approval at the same time that the state is completing the public process at the state level. This SIP revision request will not be complete and will not meet all the adequacy criteria until the state public process is complete and the SIP revision is submitted in final with a letter from the Governor or Governor's designee. EPA is proposing to approve the SIP revision request after completion of the state public process and final submittal. If any comments are received, EPA will consider those comments received both at the state and Federal level.

EPA is moving forward with proposing approval with this parallel process because transportation projects cannot be amended to the Central Indiana Transportation Plan and transportation improvement program until this budget replacement is completed. The Central Indiana area has three MPOs in the maintenance area (Indianapolis, Anderson and a portion of the Columbus, Indiana MPO). These three MPOs are required by the conformity rule to conduct conformity determinations together because they are all part of the same maintenance area with one set of ozone budgets for that area (there are not separate budgets for each MPO). The budgets need to be updated, not only to accommodate the use of MOVES2010a, but also because of the updated planning assumptions for mobile sources.

The adequacy criteria found in 40 CFR 93.118(e)(4) are as follows:

• The submitted SIP was endorsed by [the Governor/Gov's designee] and was subject to a state public hearing (§ 93.118(e)(4)(i));
• The submitted SIP underwent consultation among Federal, state, and local agencies and the state fully documented the submittal (§ 93.118(e)(4)(ii));
• The budgets are clearly identified and precisely quantified (§ 93.118(e)(4)(iii));
• The budgets, when considered with other emission sources, are consistent with applicable requirements for [reasonable further progress/attainment/maintenance] (§ 93.118(e)(4)(iv));
• The budgets are consistent with and clearly related to the emissions inventory and control measures in the SIP (§ 93.118(e)(4)(v)); and
• The revisions explain and document changes to the previous budgets, impacts on point and area source emissions and changes to established safety margins (§ 93.118(e)(4)(vi)).

Our review finds that Indiana has met all of the adequacy criteria, except the public process and final submittal by the Governor or Governor's designee. The interagency consultation group, which is composed of the state air agency, state Department of Transportation, Federal Highway Administration, EPA and the MPOs for the area, have discussed and reviewed the budgets developed with MOVES2010a and the safety margin allocation. The budgets are clearly identified and precisely quantified in the submittal in table 5.2–A. The budgets when considered with other emissions sources (point, area, non-road) are consistent with continued maintenance of the 1997 ozone standard. The budgets are clearly related to the emissions inventory and control measures in the SIP. The changes from the previous budgets are clearly explained with the change in the model from MOBILE6.2 to MOVES2010a and the revised and updated planning assumptions. The inputs to the model are detailed in the Appendix to the submittal. EPA has reviewed the inputs to the MOVES2010a modeling and participated in the consultation process. The Federal Highway Administration—Indiana Division and the Indiana Department of Transportation have taken a lead role in working with the MPO and contractor to provide accurate, timely information and inputs to the MOVES2010a model runs. The IMPO network model and Anderson MPO network model provided the vehicle miles of travel and other necessary data from the travel demand networks.

The CAA requires that revisions to existing SIPs and budgets continue to meet applicable requirements (in this case, maintenance). Therefore, states that revise existing SIPs with MOVES must show that the SIP continues to meet applicable requirements with the new level of motor vehicle emissions calculated by the new model.

To that end, Indiana's submitted MOVES2010a budgets meet EPA's two criteria for revising budgets without revising the entire SIP:

(1) The SIP continues to meet applicable requirements when the previous motor vehicle emissions inventories are replaced with MOVES2010a base year and milestone, attainment, or maintenance year inventories, and

(2) The state can document that growth and control strategy assumptions for non-motor vehicle sources continue to be valid and any minor updates do not change the overall conclusions of the SIP.

The State has documented that growth and control strategy assumptions continue to be valid and do not change the overall conclusions of the maintenance plan. The emission estimates for point, area and non-road sources have not changed. The submittal states that ''growth and control strategy assumptions for non-mobile sources (i.e. area, non-road, and point) from the original submittal for the years 2005, 2010, 2015, 2020 were developed before the down turn in the economy over the last several years. Because of this, the factors included in the original submittal may project more growth than actual into the future. As a result, the growth and control strategy assumptions for the non-mobile sources for the years 2005, 2010, 2015 and 2020 continue to be valid and do not affect the overall conclusions of the plan.''

Indiana confirms that the SIP continues to demonstrate its purpose of maintaining the 1997 ozone standard because the emissions are continuing to decrease from the attainment year to the final year of the maintenance plan. The total emissions in the revised SIP (which includes MOVES2010a emissions for mobile sources) decrease from 329.78 tpd for NO_X and 207.94 tpd for VOCs in the 2005 attainment year to 136.59 tpy NO_X and 163.69 tpd VOC in 2020. These totals demonstrate that emissions in the Central Indiana area are continuing to decline and remain below the attainment levels. The following tables show total emissions in the Central Indiana area including point, area, non-road, and mobile sources and demonstrates the declining emissions from the 2005 attainment year.

TABLE OF TOTAL EMISSIONS WITH MOVES2010a MOBILE EMISSIONS

	2005	2010	2015	2020
VOC	207.94	189.75	177.43	163.69
NO_X	329.78	223.43	168.61	136.59

Based on our review of the SIP and the new budgets provided, EPA has determined that the SIP will continue to meet its requirements if the revised motor vehicle emissions inventories are replaced with MOVES2010a inventories.

c. Applicability of MOBILE6.2-Based Budgets

Pursuant to the State's request, EPA is proposing that, if we finalize the approval of the revised budgets, the state's existing MOBILE6.2-based budgets will no longer be applicable for transportation conformity purposes upon the effective date of that final approval.

In addition, once EPA approves the MOVES2010a-based budgets, the regional transportation conformity grace period for using MOVES2010 (and subsequent minor revisions) for the pollutants included in these budgets will end for the Central Indiana ozone maintenance area on the effective date of that final approval.[2]

VI. What action is EPA taking?

EPA is proposing in this action that the Central Indiana existing approved budgets for VOCs and NO_X for 2006 and 2020 for the 1997 8-hour ozone

[2] For more information, see Question 11 of EPA's ''Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes'' and 75 FR 9411.

maintenance plan be replaced with new budgets based on the MOVES2010a emissions model. Once this proposal is finalized, future transportation conformity determinations would use the new, MOVES2010a-based budgets and would no longer use the existing MOBILE6.2-based budgets. EPA is also proposing to find that the Central Indiana area's maintenance plan would continue to meet its requirements as set forth under the CAA when these new budgets are included.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: March 26, 2012.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2012–8208 Filed 4–4–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2012–0166; FRL–9655–6]

Approval and Promulgation of Implementation Plans; State of Florida: New Source Review Prevention of Significant Deterioration: Nitrogen Oxides as a Precursor to Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve changes to the Florida State Implementation Plan (SIP), submitted by the Florida Department of Environmental Protection (FDEP) through the Division of Air Resource Management to EPA in two separate SIP revisions on October 19, 2007, and July 1, 2011. These SIP revisions modify Florida's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to address requirements promulgated in the 1997 8-hour ozone national ambient air quality standards (NAAQS) Implementation Rule NSR Update Phase II (hereafter referred to as the ''Ozone Implementation NSR Update'' or ''Phase II Rule'') recognizing nitrogen oxide (NO_X) as an ozone precursor, among other requirements. In addition, both SIP revisions make corrective and clarifying changes to Florida's regulations. EPA is proposing approval of both SIP revisions because the Agency has preliminarily determined that the changes are in accordance with the Clean Air Act (CAA or Act) and EPA regulations regarding NSR permitting.

DATES: Comments must be received on or before May 7, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2012–0166, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: benjamin.lynorae@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* EPA–R04–OAR–2012–0166, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2012–0166.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to

technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the Florida SIP, contact Ms. Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Telephone number: (404) 562–9352; email address: *bradley.twunjala@epa.gov.* For information regarding NSR, contact Ms. Yolanda Adams, Air Permits Section, at the same address above. Telephone number: (404) 562–9214; email address: *adams.yolanda@epa.gov.* For information regarding 8-hour ozone NAAQS, contact Ms. Jane Spann, Regulatory Development Section, at the same address above. Telephone number: (404) 562–9029; email address: *spann.jane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA proposing?

On October 19, 2007, and July 1, 2011, FDEP submitted revisions to EPA for approval into the Florida SIP to adopt federal requirements for NSR permitting promulgated in the Phase II Rule. Florida's October 19, 2007, SIP revision makes changes to the State's Air Quality Regulations at Chapter 62–210, Florida Administrative Code (F.A.C.), *Stationary Sources—General Requirements, Section 200—Definitions (rule 62–210.200),* and Chapter 62–212, F.A.C., *Stationary Sources—Preconstruction Review, Section 400—Prevention of Significant Deterioration (rule 62–210.400).* Florida's July 1, 2011,[1] SIP revision also makes changes at Chapter 62–210, F.A.C., to adopt PSD provisions promulgated in the Phase II Rule. Specifically, both SIP revisions propose to amend the State's PSD regulations to establish that PSD permit applicants must identify NO_X as an ozone precursor as established in the Phase II Rule. Lastly, both SIP revisions make corrective and clarifying changes to Florida's rules at Chapters 62–210 and 62–212, F.A.C. Pursuant to section 110 of the CAA, EPA is proposing to approve these changes into the Florida SIP.

Florida's October 19, 2007, SIP submission also made changes to rule 62–212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, because Florida's subsequent July 1, 2011, SIP revision made further revisions to this public participation provision, EPA is not taking action to approve Florida's October 19, 2007, revision to rule 62–212.400(11), F.A.C. Instead, EPA is proposing to approve the revisions to rule 62–212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision.

II. What is the background for EPA's proposed action?

A. What is the NSR program?

The CAA NSR program is a preconstruction review and permitting program applicable to certain new and modified stationary sources of air pollutants regulated under the CAA. The program includes a combination of air quality planning and air pollution control technology requirements. The CAA NSR program is comprised of three separate programs: PSD, nonattainment NSR (NNSR), and minor NSR. PSD is established in Part C of title I of the CAA and applies in areas that meet the NAAQS—''attainment areas''—as well as areas where there is insufficient information to determine if the area meets the NAAQS—''unclassifiable areas.'' The NNSR program is established in Part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS—''nonattainment areas.'' The minor NSR program addresses construction or modification activities that do not qualify as ''major'' and applies regardless of the designation of the area in which a source is located. Together, these programs are referred to as NSR programs. EPA regulations governing the implementation of these programs are contained in 40 CFR 51.160 through .166; 40 CFR 52.21 through .24; and, part 51, appendix S.

Section 109 of the CAA requires EPA to promulgate a primary NAAQS to protect public health and a secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit a SIP to EPA for approval that includes emission limitations and other control measures to attain and maintain the NAAQS. *See* CAA section 110, 42 U.S.C. 7410. Pursuant to section 110(a)(2)(C) of the CAA, each SIP is required to include a preconstruction review program for the construction and modification of any stationary source of air pollution to assure the maintenance of the NAAQS.

B. What are the NSR requirements for the Phase II Rule?

Today's proposed action on the Florida SIP relates to EPA's Phase II Rule. *See* 70 FR 71612 (November 29, 2005). On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS of 0.08 parts per million—also referred to as the 1997 8-hour ozone NAAQS. On April 30, 2004, EPA designated areas as attainment, nonattainment and unclassifiable for the 1997 8-hour ozone NAAQS. As part of the framework to implement the 1997 8-hour ozone NAAQS, EPA promulgated an implementation rule in two phases. Phase I of EPA's 1997 8-hour ozone implementation rule (Phase I Rule), published on April 30, 2004, effective on June 15, 2004, provided the implementation requirements for designating areas under subpart 1 and subpart 2 of the CAA (69 FR 23951).

On November 29, 2005, EPA promulgated the second phase for implementation provisions related to the 1997 8-hour ozone NAAQS—also

[1] Florida's July 1, 2011, revision also makes additional changes to Chapters 62–210, 212 and 296, F.A.C. which will be addressed in a separate rulemaking.

known as the Phase II Rule (70 FR 71612). The Phase II Rule addressed control and planning requirements as they applied to areas designated nonattainment for the 1997 8-hour ozone NAAQS such as reasonably available control technology, reasonably available control measures, reasonable further progress, modeling and attainment demonstrations and NSR, and the impact to reformulated gas for the 1997 8-hour ozone NAAQS transition. The Phase II Rule requirements include, among other changes, a provision stating that NO_X is an ozone precursor. *See* 70 FR 71612, 71679. In the Phase II Rule, EPA stated as follows:

> The EPA has recognized NO_X as an ozone precursor in several national rules because of its contribution to ozone transport and the ozone nonattainment problem. The EPA's recognition of NO_X as an ozone precursor is supported by scientific studies, which have long recognized the role of NO_X in ozone formation and transport. Such formation and transport is not limited to nonattainment areas. Therefore, we believe NO_X should be treated consistently as an ozone precursor in both our PSD and nonattainment NSR regulations. For these reasons, we have promulgated final regulations providing that NO_X is an ozone precursor in attainment areas.

The Phase II Rule made changes to federal regulations at 40 CFR 51.165 and 51.166 (which governs the NNSR and PSD permitting programs respectively). The changes made to the PSD federal regulations at 40 CFR 52.21 recognizing NO_X as an ozone precursor included changes to the definitions for ''*major stationary source*'' (40 CFR 52.21(b)(1)), ''*major modification*'' (40 CFR 52.21(b)(2)), ''*significant*'' (for significant emissions rate) (at 40 CFR 52.21(b)(23)(i)), ''*regulated NSR pollutant*'' (40 CFR 52.21(b)(50)), and the addition of a footnote at 40 CFR 52.21(i)(5)(i)(f) establishing the requirement for ambient air impact analysis. The Phase II rule also made other revisions to the NSR program; however, only the addition of NO_X as a precursor for ozone is relevant to today's action.

Pursuant to these requirements, states were required to submit SIP revisions adopting the relevant federal requirements of the Phase II Rule (at 40 CFR 51.165, 51.166 and 52.21) into their SIP no later than June 15, 2007. On October 19, 2007, and July 1, 2011, Florida submitted SIP revisions (the subject of this action) to adopt the relevant PSD provisions at 40 CFR 52.21 into the Florida SIP to be consistent with federal regulations for NSR permitting purposes promulgated in the Phase II Rule.

III. What is EPA's analysis of Florida's SIP revisions?

Florida currently has a SIP-approved NSR program for new and modified stationary sources. FDEP's PSD related definitions and preconstruction rules are found at 62–210.200, F.A.C, and 62–212.400, F.A.C. These rules apply to major stationary sources or modifications constructed in areas designated attainment as required under Part C of title I of the CAA with respect to the NAAQS. The current changes to Chapters 62–210, F.A.C., and 62–212, F.A.C., which EPA is now proposing to approve into the Florida SIP, were submitted to update the existing Florida regulations to be consistent with the federal PSD requirements, promulgated in the Phase II Rule.

Florida's October 19, 2007, SIP revision, which became state effective July 16, 2007, revised Chapters 62–210, F.A.C., and 62–212, F.A.C., to establish NO_X as an ozone precursor in the Florida SIP. Specifically for rule 62–210.200, F.A.C., the SIP revision changed the definitions for ''major stationary source,'' ''significant emissions rate'' (or ''significant'' at 40 CFR 52.21(b)(23)(i)), and ''PSD pollutant'' [2] (Florida's equivalent to the federal term ''regulated NSR pollutant'' at 40 CFR 52.21(b)(50)) to include the term ''nitrogen oxides.'' Florida defines ''PSD Pollutant'' at rule 62–210.200, F.A.C., as ''any pollutant listed as having a significant emissions rate.'' Florida's October 19, 2007, SIP revision (the subject of this action) amends the definition of ''significant emissions rate'' to adopt the Phase II Rule provisions by listing NO_X for the pollutant ''ozone.'' In doing so, Florida's definition of ''PSD pollutant'' is also amended to establish NO_X as an ozone precursor. The changes at rule 62–212.400, F.A.C., also addressed the inclusion of ''nitrogen oxides'' in the footnote at 62–212.400(3)(e)1.e., (as amended at 40 CFR 52.21(i)(5)(i)(f)) regarding air quality level for ozone. The rule at 40 CFR 52.21(i)(5)(i)(f) establishes that there is no de minimis air quality level for ozone, however any source subject to PSD with a net increase of 100 tons per year or more of volatile organic compounds or NO_X is required to perform an ambient impact analysis. Florida's October 19, 2007, SIP revision also makes clarifying and corrective changes to rule 62–212.400, F.A.C. First, FDEP amends the subsection entitled ''General Prohibitions'' at rule 62–212.400(1) by replacing the term ''Prohibitions'' with the term ''Provisions.'' Second, FDEP includes language at rule 62–212.400(1)(c) and 62–212.720—*Actuals Plantwide Applicability Limits (PALs),* to clarify that the term ''Administrator'' in 40 CFR 52.21 shall mean ''Department'' when applying the portions of the federal rule cited from within the FDEP rules.

Florida's July 1, 2011, SIP revision, which became state effective October 12, 2008, revised the definition for ''major modification'' to be consistent with the definition promulgated in the Phase II Rule to include NO_X as an ozone precursor. In addition, the July 1, 2011, SIP revision corrected an administrative error in the definition of ''major modification'' by replacing the term ''PSD pollutant'' with ''regulated air pollutant'' at rule 62–210.200(186)(d), F.A.C. Lastly, the July 1, 2011, SIP revision revises the public participation provision at 62–212.400(11), F.A.C., to clarify that the applicable public notice and participation provisions can be found at 62–210.350, F.A.C., and 62–110.106, F.A.C., to satisfy the federal public participation requirements. As described earlier, Florida's October 19, 2007, SIP submission also made changes to rule 62–212.400(11), F.A.C., regarding applicable public participation requirements for PSD permitting. However, Florida's July 1, 2011, SIP revision made further changes to the public participation provision at rule 62–212.400(11), F.A.C., and therefore, EPA is not taking action to approve Florida's October 19, 2007, revision to rule 62–212.400(11), F.A.C. Instead, EPA is proposing to approve the revision to rule 62–212.400(11), F.A.C., included in Florida's July 1, 2011, SIP revision.

As part of its review of the Florida SIP revisions, EPA performed a line-by-line

[2] On, June 27, 2008 (73 FR 36435), EPA took final action to approve a February 3, 2006, Florida SIP revision to adopt the provisions promulgated in the 2002 NSR Reform Rule. *See* 67 FR 80186. In the June 27, 2008, final rulemaking, EPA approved Florida's definition of ''PSD Pollutant'' as an equivalent to the federal term ''regulated NSR pollutant'' into the Florida SIP. As part of its February 3, 2006, SIP revision to adopt the NSR Reform provisions, Florida provided an equivalency demonstration that addressed how the State's definition of ''PSD pollutant'' was comparable to the federal term ''regulated NSR pollutant.'' EPA's June 27, 2008, rulemaking also conditionally approved portions of Florida's PSD program that were not consistent with federal PSD regulations (including the definition for significant emissions rate). On June 17, 2009, in response to the conditional approval, FDEP submitted a SIP revision to revise portions of its PSD program to be consistent with the federal PSD regulations. EPA took final action to approve this revision on April 12, 2011, which converted the State's PSD program from conditional to full approval. *See* 76 FR 20239.

review of the proposed SIP revisions including the provision that may differ from the federal rules, and determined that they are consistent with the program requirements for NSR, set forth at 40 CFR 51.166. States may meet the requirements of 40 CFR part 51 and the Phase II Rules with alternative but equivalent regulations.

IV. Proposed Action

EPA is proposing to approve Florida's October 19, 2007, and July 1, 2011, SIP revisions adopting federal regulations amended in the Phase II Rule recognizing NOx as an ozone precursor into the Florida SIP and making clarifying and corrective changes at Chapters 62–210 and 62–212, F.A.C. EPA has made the preliminary determination that these SIP revisions are approvable because it is in accordance with the CAA and EPA regulations regarding NSR permitting.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Oxides of nitrogen, Recordkeeping and reporting, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 23, 2012.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2012–8197 Filed 4–4–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2012–0095; FRL–9656–3]

RIN 2040–AF33

Proposed Withdrawal of Certain Federal Water Quality Criteria Applicable to California, New Jersey and Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the federal regulations to withdraw human health and aquatic life water quality criteria applicable to certain waters of New Jersey, Puerto Rico, and California's San Francisco Bay, now that those States have adopted and EPA has approved relevant state criteria. EPA is seeking public comment on its action with respect to those state criteria that are less stringent than the federally promulgated criteria. The withdrawal of the federally promulgated criteria will enable New Jersey, Puerto Rico, and California to implement their EPA-approved water quality criteria.

DATES: Comments must be received on or before June 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2012–0095, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: ow-docket@epa.gov.*
- *Mail to:* Water Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Attention Docket ID No. EPA–HQ–OW–2012–0095.
- *Hand Delivery:* EPA Docket Center, EPA West Room 3334, 1301 Constitution Ave. NW. Washington, DC 20004. Attention Docket ID No. EPA–HQ–OW–2012–0095. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2012–0095. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of

encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at two Docket Facilities. The Office of Water (''OW'') Docket Center is open from 8:30 a.m. until 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426 and the Docket address is OW Docket, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. Publicly available docket materials are also available in hard copy at the U.S. EPA Region 2 and U.S. EPA Region 9 addresses. Docket materials can be accessed from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information with respect to New Jersey, contact Wayne Jackson, U.S. EPA, Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, New York 10007 (telephone: (212) 637–3807 or email: *jackson.wayne@epa.gov*). For information with respect to Puerto Rico, contact Izabela Wojtenko U.S. EPA, Region 2, Division of Environmental Planning and Protection, 290 Broadway, New York, NY 10007 (telephone: (212) 637–3814 or email: *wojtenko.izabela@epa.gov*). For information with respect to California, contact Diane E. Fleck, P.E. Esq., U.S. EPA Region 9, WTR–2, 75 Hawthorne St., San Francisco, CA 94105 (telephone: (415) 972–3480 or email: *fleck.diane@epa.gov*). For general and administrative concerns, contact Bryan ''Ibrahim'' Goodwin, U.S. EPA Headquarters, Office of Science and Technology, 1200 Pennsylvania Avenue NW., Mail Code 4305T, Washington, DC 20460 (telephone: (202) 566–0762 or email: *goodwin.bryan@epa.gov*).

SUPPLEMENTARY INFORMATION: This notice is organized as follows:

I. General Information

A. What entities may be affected by this action?

No one is affected by the proposed actions contained in this notice. These proposed actions would merely serve to withdraw certain federal water quality criteria that have been applicable to New Jersey, Puerto Rico, and California now that these States have adopted criteria that EPA has determined are consistent with the CWA and its implementing regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person identified in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What are the applicable federal statutory and regulatory requirements?

In 1992, EPA promulgated the ''National Toxics Rule'' (''NTR'') to establish numeric water quality criteria for 12 states and two Territories, including New Jersey, Puerto Rico and parts of California (hereafter ''States'') that had failed to comply fully with Section 303(c)(2)(B) of the Clean Water Act (''CWA'') (57 FR 60848, December 22, 1992). The criteria codified at 40 CFR 131.36 became the applicable water quality standards in those 14 States for all purposes and programs under the CWA effective February 5, 1993.

On May 18, 2000, EPA then promulgated a final rule known as the ''California Toxics Rule'' (''CTR'') at 40 CFR 131.38 in order to establish numeric water quality criteria for priority toxic pollutants for the State of California that were not previously in the NTR, since the State had not complied fully with Section 303(c) (2) (B) of the Clean Water Act (CWA) (65 FR31682). At that time, any criteria promulgated as part of the NTR for California were codified in the criteria tables for the CTR at 40 CFR 131.38.

The water quality standards program was developed with an emphasis on state primacy. Although in the NTR and CTR EPA promulgated toxic criteria for the certain States, EPA prefers that states maintain primacy, revise their own standards, and achieve full compliance (see 57 FR 60860, December 22, 1992). As described in the preamble to the final NTR and CTR, when a State adopts, and EPA approves, water quality criteria that meet the requirements of the CWA, EPA will issue a rule amending the NTR and/or CTR to withdraw the federal criteria applicable to that State.

Today, EPA is proposing to amend the federal regulations to withdraw certain human health and aquatic life criteria applicable in New Jersey and Puerto Rico, and the Agency does not anticipate public comment on such action because the state-adopted, EPA-approved criteria are no less stringent than the promulgated federal criteria. In addition, EPA is proposing to amend the federal regulations to withdraw certain other human health and aquatic life criteria applicable in New Jersey and Puerto Rico, as well as California, and the Agency is seeking public comment because such state-adopted, EPA-approved criteria are less stringent than the federally promulgated criteria.

B. What are the applicable federal water quality criteria that EPA is proposing to withdraw?

New Jersey

On August 4, 1994, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life and human health criteria. New Jersey adopted aquatic life and human health criteria for many of the toxic pollutants contained in the NTR and reorganized certain designated use classifications and requirements pertaining to the Delaware River and Bay. EPA Region 2 approved the State's criteria (with the exception of the State's Polychlorinated biphenyl (''PCB'') human health criteria) on March 17, 2000, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published the final rule to remove these criteria in the **Federal Register** on December 3, 2002 (67 FR 71843). However, this action did not address all applicable EPA-promulgated numeric water quality criteria contained in the 1992 NTR.

Subsequently, On March 1, 2002, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life criteria for lead and human health criteria for PCBs. EPA Region 2 approved the State's criteria on August 16, 2002, because New Jersey's numeric criteria for lead for the protection of aquatic life and for PCBs for the protection of human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11.

In addition, on November 8, 2006, New Jersey submitted to EPA Region 2 revisions to its surface water quality standards (New Jersey Administrative Code 7:9B), including aquatic life and human health criteria. New Jersey adopted aquatic life and human health criteria for the remainder of the toxic pollutants contained in the NTR. EPA Region 2 approved the State's criteria on December 20, 2006, because New Jersey's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11.

For many of the pollutants covered in the 2002 and 2006 actions, New Jersey adopted water quality criteria for aquatic life and human health that are no less stringent than the promulgated federal criteria. In addition, for certain pollutants covered in the 2002 and 2006 actions, New Jersey adopted water quality criteria for aquatic life and human health that are less stringent than the promulgated federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA approved the State's criteria, although they are less stringent than the federally promulgated criteria, because EPA determined that the State's criteria were scientifically sound and protective of the designated use(s). EPA's actions which approve New Jersey's adopted criteria (including a rationale for approving criteria that are less stringent than the federally promulgated criteria) can be accessed at OW docket number EPA–HQ–OW–2012–0095.

The following is a list of pollutants for which New Jersey adopted criteria that are no less stringent than the promulgated federal criteria covered in this proposal:

- Arsenic (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)).
- Cadmium (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)).
- Chromium III (aquatic life—freshwater (acute and chronic))).
- Chromium VI (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)).
- Copper (aquatic life—freshwater (acute and chronic))).
- Lead (aquatic life—freshwater (acute) and marine water (acute)).
- Mercury (aquatic life—freshwater (acute) and marine water (acute)).
- Nickel (aquatic life—freshwater (acute and chronic) and marine water (acute)).
- Selenium (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)).
- Silver (aquatic life—freshwater (acute) and marine water (acute)).
- Zinc (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic)).
- Chlorodibromomethane (human health—organisms only).
- Fluorene (human health—organisms only).
- Hexachlorbutadiene (human health—organisms only).
- PCBs (human health—water & organisms and organisms only).

EPA is proposing to withdraw the federally promulgated criteria for these pollutants and does not anticipate public comment on such action because the state-adopted, EPA-approved criteria are no less stringent than the federally promulgated criteria.

The following is a list of pollutants for which New Jersey adopted criteria, and which EPA approved, that are less stringent than the promulgated federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11 covered in this proposal:

- Copper (aquatic life—marine (acute and chronic)).
- Lead (aquatic life—freshwater (chronic) and marine water (chronic)).
- Mercury (aquatic life—freshwater (chronic) and marine water (chronic)).
- Nickel (aquatic life—marine water (chronic)).
- 1,1–Dichloroethylene (human health—organisms only).
- 1,1,2,2–Tetrachloroethane (human health—organisms only).
- 1,1,2–Trichloroethane (human health—organisms only).
- Isophrone (human health—organisms only).
- gamma-BHC (human health—organisms only).

As these criteria are less stringent than the federally promulgated criteria, but nonetheless have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131, EPA is seeking public comment before withdrawing the federally promulgated criteria.

The finalization of the proposed actions for New Jersey would result in the complete removal of New Jersey from the NTR.

Puerto Rico

On September 21, 1990 and March 28, 2003, respectively, Puerto Rico submitted to EPA Region 2 revisions to its water quality standards, including aquatic life and human health criteria. Puerto Rico adopted aquatic life and human health criteria for many of the toxic pollutants contained in the NTR. EPA Region 2 approved the Commonwealth's 1990 and 2003 criteria on March 28, 2002, and June 26, 2003, respectively, because Puerto Rico's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA published the final rule to remove those criteria that were no less stringent than the promulgated criteria in the NTR in the **Federal Register** on October 29, 2004 (69 FR 63079). However, this action did not address all applicable EPA promulgated numeric water quality criteria contained in the 1992 NTR.

On May 5, 2010, Puerto Rico submitted to EPA Region 2 revisions to its water quality standards, including aquatic life and human health criteria. Puerto Rico adopted aquatic life and human health criteria for the remainder of the toxic pollutants contained in the NTR. EPA Region 2 approved the Commonwealth's criteria on August 4, 2010, because Puerto Rico's numeric criteria for the protection of aquatic life and human health were consistent with the CWA and EPA's implementing regulations at 40 CFR 131.11. EPA approved the Commonwealth's criteria, although they are less stringent than the federally promulgated criteria, because EPA determined that the Commonwealth's criteria were scientifically sound and protective of the designated use(s). EPA's actions which approve Puerto Rico's adopted criteria (including a rationale for approving criteria that are less stringent than the federally promulgated criteria) can be accessed at OW docket number EPA–HQ–OW–2012–0095.

For many of the pollutants covered in the 2010 action, Puerto Rico adopted water quality criteria for aquatic life and human health that are no less stringent than the promulgated federal criteria. In addition, for certain pollutants covered in the 2010 action, Puerto Rico adopted water quality criteria for aquatic life and human health that are less stringent than the promulgated federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.11.

The following is a list of pollutants for which Puerto Rico adopted criteria that are no less stringent than the promulgated federal criteria covered in this proposal:

- Chromium VI (aquatic life—marine water (acute and chronic)).
- Thallium (human health—water & organisms and organisms only).
- Dioxin (human health—water & organisms and organisms only).
- Dichlorobromomethane (human health—organisms only).
- Benzo(a)Anthracene (human health—organisms only).
- Benzo(a)Pyrene (human health—organisms only).
- Benzo(b)Flouranthene (human health—organisms only).
- Benzo(k)Flouranthene (human health—organisms only).
- Chrysene (human health—organisms only).
- Dibenzo(a,h)Anthracene (human health—organisms only).
- Fluorene (human health—organisms only).
- Indeno(1,2,3-cd) Pyrene (human health—organisms only).
- alpha-BHC (human health—water & organisms and organisms only).
- beta-BHC (human health—water & organisms and organisms only).
- gamma-BHC (aquatic life—freshwater (chronic)).
- alpha-Endosulfan (aquatic life—marine water (acute and chronic)).
- beta-Endosulfan (aquatic life—marine water (acute and chronic)).
- Endrin Aldehyde (human health—water & organisms and organisms only).
- Heptachlor Epoxide (aquatic life—freshwater (acute and chronic) and marine water (acute and chronic).
- PCBs (aquatic life—freshwater (chronic) and marine water (chronic)) (human health—water & organisms and organisms only).

EPA is proposing to withdraw the federally promulgated criteria for these pollutants and does not anticipate public comment on such action because the state-adopted, EPA-approved criteria are no less stringent than the federally promulgated criteria.

The following is a list of pollutants for which Puerto Rico adopted criteria, approved by EPA, that are less stringent than the promulgated federal criteria, but that nonetheless meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131, covered in this proposal:

- Mercury (aquatic life—freshwater (chronic) and marine water (chronic)).
- Dichlorobromomethane (human health—water & organisms).
- Benzo(a)Anthracene (human health—water & organisms).
- Benzo(a)Pyrene (human health—water & organisms).
- Benzo(b)Flouranthene (human health—water & organisms).
- Benzo(k)Flouranthene (human health—water & organisms).
- Chrysene (human health—water & organisms).
- Dibenzo(a,h)Anthracene (human health—water & organisms).
- Indeno(1,2,3-cd) Pyrene (human health—water & organisms).
- Isophrone (human health—water & organisms and organisms only).
- Endosulfan Sulfate (human health—water & organisms and organisms only).
- Endrin (aquatic life—freshwater (chronic)).
- Heptachlor Epoxide (human health—water & organisms and organisms only).

As these criteria are less stringent than the promulgated federal criteria, but nonetheless have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR 131.36, EPA is seeking public comment before withdrawing the federally promulgated criteria.

The finalization of the proposed actions for Puerto Rico would result in the complete removal of Puerto Rico from the NTR.

California

This notice proposes to amend the federal regulations to withdraw water quality criteria for cyanide applicable to San Francisco Bay, California. On December 22, 1992, in the NTR, and on May 18, 2000, in the CTR, EPA promulgated federal regulations establishing water quality criteria for priority toxic pollutants for California. On February 28, 2008, California completed its adoption process to incorporate cyanide aquatic life water quality criteria for San Francisco Bay. The State calls these criteria site-specific water quality objectives or site-specific objectives (''SSOs''). On May 28, 2008, the State submitted the site-specific objectives to EPA Region 9 for review and approval. On July 22, 2008, EPA approved an amendment to the Water Quality Control Plan for the San Francisco Bay Region (Basin Plan), which was adopted under Resolution No. R2–2006–0086 and submitted to EPA by the State. The amendment adopts site-specific marine aquatic life water quality objectives for cyanide in San Francisco Bay. Since California now has marine aquatic life site-specific objectives, effective under the CWA, for cyanide for San Francisco Bay, EPA has

determined that the federally promulgated saltwater cyanide aquatic life criteria are no longer needed for San Francisco Bay. EPA approved the State's criteria, although they are less stringent than the federally promulgated criteria, because EPA determined that the State's criteria were scientifically sound and protective of the designated use(s) for San Francisco Bay. EPA's actions which approve California's adopted objectives (including a rationale for approving objectives that are less stringent than the federally promulgated criteria) can be accessed at OW docket number EPA–HQ–OW–2012–0095.

Described in detail herein under the heading ''Site-Specific Aquatic Life Objectives for Cyanide'' are California's recently adopted marine cyanide aquatic life site-specific objectives for the San Francisco Bay, which EPA subsequently approved, including the accompanying footnotes to the table. The footnotes also include a description of which waters are included in the term ''San Francisco Bay.''

EPA-Approved Site-Specific Aquatic Life Objectives

TABLE 3–3C—MARINE [a] WATER QUALITY OBJECTIVES FOR CYANIDE IN SAN FRANCISCO BAY [b]

[Values in µg/l]

Cyanide	Chronic Objective (4-day Average)	2.9
Cyanide	Acute Objective (1-hour Average)	9.4

Footnotes to Table 3–3C:

[a] Marine waters are those in which the salinity is equal to or greater than 10 parts per thousand 95 percent of the time, as set forth in Chapter 4 of the Basin Plan. For water in which the salinity is between 1 and 10 parts per thousand, the applicable objectives are the more stringent of the freshwater and marine objectives.

[b] These Objectives apply to all segments of San Francisco Bay, including Sacramento/San Joaquin River Delta (within San Francisco Bay region), Suisun Bay, Carquinez Strait, San Pablo Bay, Central San Francisco Bay, Lower San Francisco Bay, and South San Francisco Bay.

As these criteria are less stringent than the promulgated federal criteria, but nonetheless have been determined to meet the requirements of the CWA and EPA's implementing regulations at 40 CFR part 131, EPA is seeking public comment before withdrawing the federally promulgated criteria. This proposal will result in the withdrawal of saltwater aquatic life cyanide [1] criteria for San Francisco Bay under the NTR (with conforming changes to the CTR). However, other criteria for cyanide for waters in California that are currently part of the NTR or CTR will remain unchanged in the federal regulations.

III. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information-collection burden because it is administratively withdrawing federal requirements that are no longer needed in New Jersey, Puerto Rico, and California. It does not include any information-collection, reporting, or recordkeeping requirements. However, the Office of Management and Budget (''OMB'') has previously approved the information-collection requirements contained in the existing regulations 40 CFR Part 131 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0049. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (''SBA's'') regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise, which is independently owned and operated and is not dominant in its field.

This rule imposes no regulatory requirements or costs on any small entity. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local, or tribal governments, or the private sector. Thus, this rule is not subject to the requirements of UMRA Sections 202 and 205 for a written statement and small government agency plan. Similarly, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and is therefore not subject to UMRA Section 203.

E. Executive Order 13132 (Federalism)

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 of August 4, 1999, entitled ''Federalism'' (64 FR 43255, August 10, 1999). This rule imposes no regulatory requirements or costs on any state or local governments. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

[1] In the regulatory text, saltwater criteria for Cyanide are identified as Columns C1 and C2 of ''Compound 14'' in National Toxics Rule at 40 CFR 131.36(b)(1), therefore, the proposed withdrawal will remove Column C1- pollutant 14 and Column C2 ''pollutant 14'' from the applicable criteria to ''Waters of San Francisco Bay, at 40 CFR 131.36(d)(10)(ii).

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule imposes no regulatory requirements or costs on any tribal government. It does not have substantial direct effects on tribal governments, the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early-life exposure to the toxic pollutants for which we are soliciting comments.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because (1) New Jersey's, Puerto Rico's, and California's criteria apply to all marine waters in the State, and thus EPA does not believe that this action would disproportionately affect any one group over another, and (2) EPA has previously determined, based on the most current science and EPA's CWA Section 304(a) recommended criteria, that New Jersey's, Puerto Rico's, and California's adopted and EPA-approved criteria are protective of human health and aquatic life.

List of Subjects in 40 CFR Part 131

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 30, 2012.

Lisa P. Jackson,

Administrator.

• For the reasons set out in the preamble title 40, Chapter I, part 131 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

§ 131.36 [Amended]

2. Section 131.36 is amended as follows:

a. Removing and reserving paragraph (d)(3).

b. Removing and reserving paragraph (d)(4).

c. Revising the table in paragraph (d)(10)(ii) as follows:

(i) Under the heading ''Water and use classification'' add a new first line to read as follows:

Waters of the Sacramento-San Joaquin Delta within Regional Water Board 5

(ii) Under the heading ''Applicable criteria'' add a new first line to read as follows:

These waters are assigned the criteria in:

Column C1—pollutant 14

Column C2—pollutant 14

(iii) Under the heading ''Applicable criteria'', opposite the entry for ''Waters of San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta'', remove ''Column C1—pollutant 14'' and ''Column C2—pollutant 14''.

§ 131.38 [Amended]

3. Section 131.38 is amended as follows:

a. Revise footnote ''r'' in the ''Footnotes to Table in Paragraph (b)(1)'' to read as follows:

r. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the Sacramento-San Joaquin Delta within California Regional Water Board 5, but excluding the San Francisco Bay. This section does not apply instead of the NTR for these criteria.

[FR Doc. 2012–8202 Filed 4–4–12; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[EPA–R10–OW–2012–0197; FRL–9654–6]

Ocean Dumping; Designation of Ocean Dredged Material Disposal Sites Offshore of Yaquina Bay, OR

AGENCY: The Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to designate two new ocean dredged material disposal (ODMD) sites offshore of Yaquina Bay, Oregon pursuant to the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended. The new sites are needed primarily to serve the long-term need for a location to dispose of material dredged from the Yaquina River navigation channel, and to provide a location for the disposal of dredged material for persons who have

received a permit for such disposal. The newly designated sites will be subject to ongoing monitoring and management to ensure continued protection of the marine environment.

DATES: Comments on this proposed rule must be received no later than May 7, 2012.

ADDRESSES: For more information on this proposed rule, Docket ID No. EPA–R10–OW–2012–0197 use one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for accessing the docket and materials related to this proposed rule.
- *Email: Lohrman.Bridgette@epa.gov.*
- *Mail:* Bridgette Lohrman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs, Environmental Review and Sediment Management Unit, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205.

Publicly available docket materials are available either electronically at *www.regulations.gov* or in hard copy during normal business hours from the regional library at the U.S. Environmental Protection Agency, Region 10 Library, 10th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. For access to the documents at the Region 10 Library, contact the Region 10 Library Reference Desk at (206) 553–1289, between the hours of 9 a.m. to 12 p.m., and between the hours of 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays, for an appointment.

FOR FURTHER INFORMATION CONTACT: Bridgette Lohrman, U.S. Environmental Protection Agency, Region 10, Office of Ecosystems, Tribal and Public Affairs, Environmental Review and Sediment Management Unit, Oregon Operations Office, 805 SW Broadway, Suite 500, Portland, Oregon 97205; phone number (503) 326–4006; email: *Lohrman.Bridgette@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Potentially Affected Persons

Persons potentially affected by this action include those who seek or might seek permits or approval by the EPA to dispose of dredged material into ocean waters pursuant to the Marine Protection, Research, and Sanctuaries Act (MPRSA), as amended, 33 U.S.C. 1401 to 1445. The EPA's proposed action would be relevant to persons, including organizations and government bodies seeking to dispose of dredged material in ocean waters offshore of Yaquina Bay, Oregon. Currently, the U.S. Army Corps of Engineers (Corps) would be most affected by this action. Potentially affected categories and persons include:

Category	Examples of potentially regulated persons
Federal government	U.S. Army Corps of Engineers Civil Works projects, and other Federal agencies.
Industry and general public	Port authorities, marinas and harbors, shipyards and marine repair facilities, berth owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths, Government agencies requiring disposal of dredged material associated with public works projects.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding persons likely to be affected by this action. For any questions regarding the applicability of this action to a particular person, please refer to the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. History of Disposal Sites Offshore of Yaquina Bay, Oregon

The Corps historically used the general area offshore of Yaquina Bay for dredged material disposal. In 1977, an Interim ODMD site offshore of Yaquina Bay received EPA interim designation and was used by the Corps for dredged material disposal after 1977 and prior to 1986 (Figure 1). However, because of increased mounding in the Interim Site and its potential adverse effect on navigation safety, the Corps selected an alternate ODMD site, the ''Adjusted Site,'' under the authority of section 103 of the MPRSA, with EPA concurrence. The Corps began to use this ''Adjusted Site'' in 1986. By 1990, dredged material had accumulated in the Adjusted Site to an extent that necessitated careful placement of material on specific portions of the Adjusted Site. In 2000, the Corps ceased disposal of material at the Adjusted Site. In 2001, the Corps and the EPA completed an examination of possible new locations for ocean disposal further offshore from the entrance to Yaquina Bay. The recommended locations from that study are the proposed Yaquina North and South Sites.

In October 2000, these disposal sites were authorized to be used by the Corps, with EPA concurrence, under Section 103 of the MPRSA as selected sites. The Yaquina North Site has been the preferred site for disposal. The authorization to use the Yaquina North Site under section 103 of the MPRSA expired at the end of the 2011 dredge season and is unavailable for future dredge seasons unless designated as proposed in this action. Since the Yaquina South Site has never been used for disposal of dredged material due to prevailing southwest winds, it is currently available for use as a selected site under section 103. To provide for sufficient disposal capacity over the long term, the EPA proposes to designate both a Yaquina North Site and a Yaquina South Site under section 102 of the MPRSA, for the ocean disposal of dredged material offshore of Yaquina Bay using the footprints of the section 103 selected sites.

The proposed designation of the two ocean disposal sites for dredged material does not mean that the Corps or the EPA has approved the use of the Sites for open water disposal of dredged material from any specific project. Before any person can dispose dredged material at either of the proposed Sites, the EPA and the Corps must evaluate the project according to the ocean dumping regulatory criteria (40 CFR part 227) and authorize the disposal. The EPA independently evaluates proposed dumping and has the right to restrict and/or disapprove of the actual disposal of dredged material if the EPA determines that environmental requirements under the MPRSA have not been met.

B. Location and Configuration of Yaquina North and South Ocean Dredged Material Disposal Sites

This action proposes the designation of two ocean dredged material sites to the north and south, respectively, offshore of Yaquina Bay. The location of the two proposed ocean dredged material disposal sites (Yaquina North and South ODMD Sites, North and

South Sites, or Sites) are bounded by the coordinates, listed below, and shown in Figure 1. The proposed designation of these two Sites will allow the EPA to adaptively manage the Sites to maximize their capacity, minimize the potential for mounding and associated safety concerns, and minimize the potential for any long-term adverse effects to the marine environment.

The coordinates for the two Sites are, in North American Datum 83 (NAD 83):

Yaquina North ODMD Site	Yaquina South ODMD Site
44°38′17.98″ N, 124°07′25.95″ W	44°36′04.50″ N, 124°07′52.66″ W
44°38′12.86″ N, 124°06′31.10″ W	44°35′59.39″ N, 124°06′57.84″ W
44°37′14.33″ N, 124°07′37.57″ W	44°35′00.85″ N, 124°08′04.27″ W
44°37′09.22″ N, 124°06′42.73″ W	44°34′55.75″ N, 124°07′09.47″ W

The two proposed Sites are located in approximately 112 to 152 feet of water, and are located to the north and south of the entrance to Yaquina Bay on the central Oregon Coast. The proposed Yaquina North Site would be located about 1.7 nautical miles northwest of the entrance to Yaquina Bay and the proposed Yaquina South Site would be located about 2.0 nautical miles southwest of the bay's entrance. Both ocean disposal sites would be 6,500 feet long by 4,000 feet wide, about 597 acres each.

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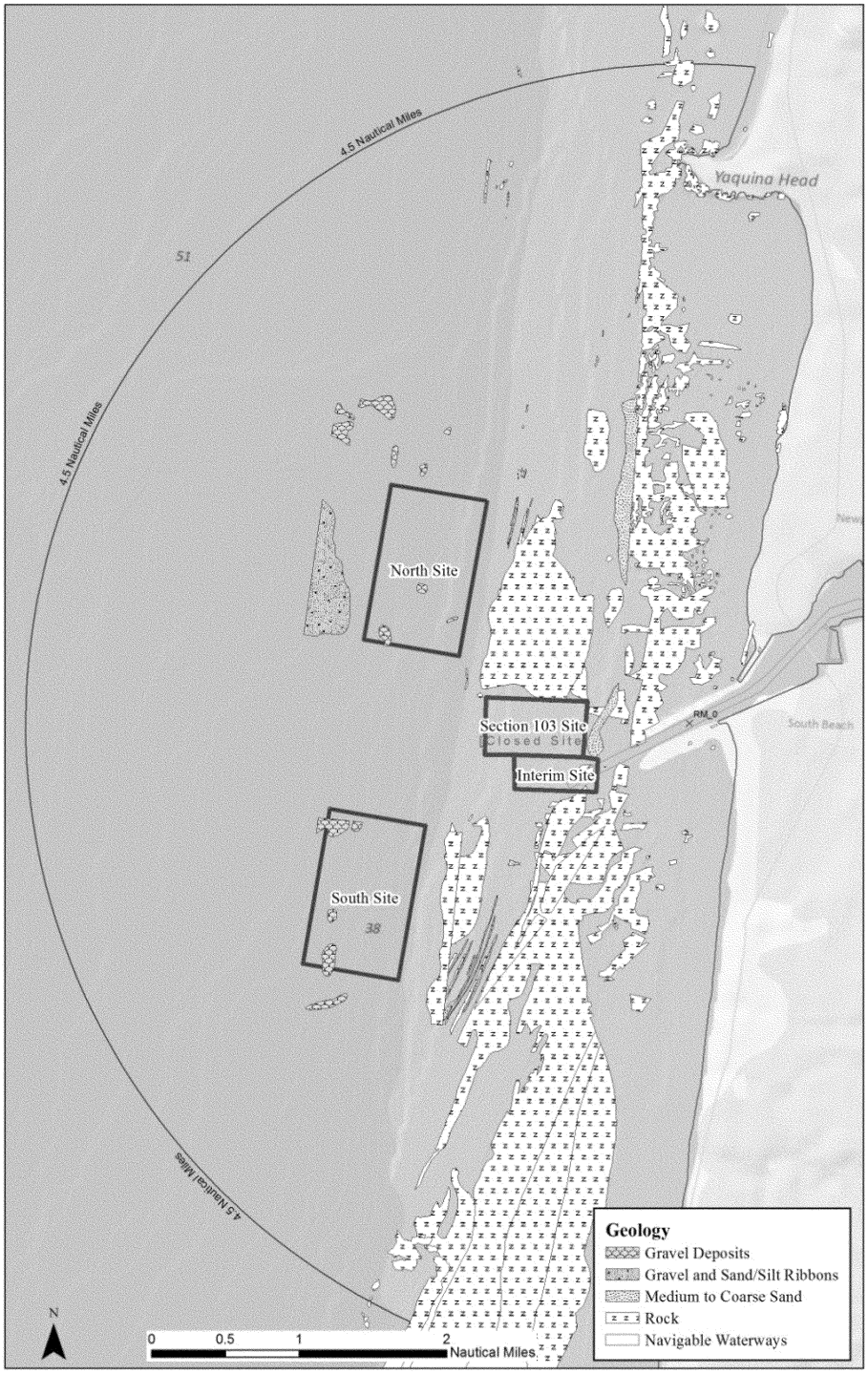

Figure 1. Proposed Yaquina North and South ODMD Sites

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C. Management and Monitoring of the Sites

The proposed Sites are expected to receive sediments dredged by the Corps to maintain the federally authorized navigation project at Yaquina Bay, Oregon and dredged material from other persons who have obtained a permit for the disposal of dredged material at the Sites. All persons using the Sites are required to follow a Site Management and Monitoring Plan (SMMP) for the Sites. The SMMP includes management and monitoring requirements to ensure that dredged materials disposed at the Sites are suitable for disposal in the ocean and that adverse impacts of disposal, if any, are addressed to the maximum extent practicable. The SMMP for the Yaquina North and South Sites, in addition to the aforementioned, also addresses management of the Sites to ensure adverse mounding does not occur and to ensure that disposal events minimize interference with other uses of

ocean waters in the vicinity of the proposed Sites. The SMMP is available as a draft document for review and comment at this time. The public is encouraged to take advantage of this opportunity to read and submit comments on the draft SMMP.

D. MPRSA Criteria

In proposing to designate these Sites, the EPA assessed the proposed Sites according to the criteria of the MPRSA, with particular emphasis on the general and specific regulatory criteria of 40 CFR part 228, to determine whether the proposed site designations satisfy those criteria. The EPA's draft *Yaquina Bay, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, [February 2012]* (EA), provides an extensive evaluation of the criteria and other related factors for the designation of these Sites. The EA is available as a draft document for review and comment at this time. The public is encouraged to take advantage of this opportunity to read and submit comments on the draft EA.

General Criteria (40 CFR 228.5)

1. Sites must be selected to minimize interference with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation (40 CFR 228.5(a)).

The EPA reviewed the potential for the Sites to interfere with navigation, recreation, shellfisheries, aquatic resources, commercial fisheries, protected geologic features, and cultural and/or historically significant areas and found low potential for conflicts. The proposed Sites spatially overlap with recreational activities such as boating and whale watching, recreational and commercial finfish or Dungeness crab fishing, tow lane agreements between tow boat operations and Dungeness crab fishermen, and recreational and commercial navigation. However, the Sites are unlikely to cause interference with these or other uses provided close communication and coordination is maintained among users, vessel traffic control and the U.S. Coast Guard. Recreational users are expected to more heavily use areas that are shoreward of the Sites and to focus their activities on Yaquina Reef. Commercial fishing, including that for salmon and Dungeness crab, is expected to occur at the Sites, but the EPA does not expect disposal operations at the Sites to conflict with this use because of the limited space and time during which disposal occurs. The draft SMMP outlines site management objectives, including minimizing interference with other uses of the ocean. Should a site use conflict be identified, site use could be modified according to the SMMP to minimize that conflict.

2. Sites must be situated such that temporary perturbations to water quality or other environmental conditions during initial mixing caused by disposal operations would be reduced to normal ambient levels or undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery (40 CFR 228.5(b)).

Based on the EPA's review of modeling, monitoring data, sediment quality, and history of use, no detectable contaminant concentrations or water quality effects, e.g., suspended solids, would be expected to reach any beach or shoreline from disposal activities at the Sites. The primary impact of disposal activities on water quality is expected to be temporary turbidity caused by the physical movement of sediment through the water column. All dredged material proposed for disposal will be evaluated according to the ocean dumping regulations at 40 CFR 227.13 and guidance developed by the EPA and the Corps. In general, dredged material which meets the criteria under 40 CFR 227.13(b) is deemed environmentally acceptable for ocean dumping without further testing. Dredged material which does not meet the criteria of 40 CFR 227.13(b) must be further tested as required by 40 CFR 227.13(c).

Disposal of suitable material meeting the regulatory criteria and deemed environmentally acceptable for ocean dumping will be allowed at the proposed Sites. Most of the dredged material (approximately 95%) to be disposed at the Sites is expected to be sandy material, while a small amount of material (up to 5% of the material) would be classified as fine-grained. Hopper dredges, which are typically used for the Corps' annual navigation dredging, are not capable of removing debris from the dredge site. However, specific projects may utilize a clamshell dredge, in which case there is the potential for the occasional placement of naturally occurring debris at the disposal Sites.

3. The sizes of disposal sites will be limited in order to localize for identification and control any immediate adverse impacts, and to permit the implementation of effective monitoring and surveillance to prevent adverse long-range impacts. Size, configuration, and location are to be determined as part of the disposal site evaluation (40 CFR 228.5(d)).

To ensure that site managers can be responsive to the specifics of each dredging season based on dredge schedules, weather, and bathymetry at the Sites, the EPA proposes to designate both the North and South Sites. The footprints of the proposed Sites are designed to maximize their capacity, helping to assure minimal mounding and minimize any adverse affects to the wave climate. The presence of Yaquina Reef, close to shore at shallow depths, prevents nearshore designation and dredged material disposal in dispersive locations at depths less than 60 feet. The North Site will be the preferred placement area for disposal of dredged material as was the case when the Site was used as a Section 103 selected site. During some periods, disposal may be alternated between the two Sites. The use of the South Site is more dependent upon wind and wave conditions, particularly in April and May when the typical dredge season starts, and for this reason will tend to be used less frequently than the North Site. Effective monitoring of the Sites is necessary and required. The EPA will require annual bathymetric surveys for each Site to track site capacity and to assess the potential for mounding concerns. These surveys will inform the active management of the proposed Sites.

4. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites where historical disposal has occurred (40 CFR 228.5(e)).

Disposal areas located off of the continental shelf would be at least 20 nautical miles offshore. This distance is well beyond the 4.5 nautical mile haul distance determined to be feasible by the Corps for maintenance of their Yaquina Bay project. Additional disadvantages to off-shelf ocean disposal would be the unknown environmental impacts of disposal on deep-sea, stable, fine-grained benthic communities and the higher cost of monitoring sites in deeper waters and further offshore.

Historic disposal has occurred at the proposed location for these Sites. The substrate of the proposed Sites is similar grain size to the disposal material and the placement avoids the unique habitat features of Yaquina Reef.

Specific Criteria (40 CFR 228.6)

1. Geographical Position, Depth of Water, Bottom Topography and Distance from Coast (40 CFR 228.6(a)(1)).

The EPA does not anticipate that the geographical position of the proposed Sites, including the depth, bottom

topography and distance from the coastline, will unreasonably degrade the marine environment. To help avoid adverse mounding at the Sites, site management will generally include uniform placement, i.e., spreading disposal material throughout the Sites in a manner that will result in a relatively uniform accumulation of disposed material on the bottom over the long-term. Site management will include creating dump plans for each Site where disposal will occur. Dump plans establish cells within the Site to ensure uniform placement. In addition to minimizing mounding, the uniform placement is expected to minimize the thickness of disposal accumulations which is expected to be less disruptive to benthic communities and aquatic species, such as crabs, that might be present at the Sites during disposal events. Because the proposed Sites are relatively deep, to avoid the nearshore Yaquina Reef, they are not considered dispersive. Material placed in the Sites is not expected to move from the Sites except during large storm events.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2)).

The proposed Sites are not located in exclusive breeding, spawning, nursery, feeding or passage areas for adult or juvenile phases of living resources. At and in the immediate vicinity of the proposed Sites, a variety of pelagic and demersal fish species, including salmon, green sturgeon, and flatfish, as well as Dungeness crab, are found. Studies conducted by the EPA and the Corps at the proposed Sites found the benthic infaunal and epifaunal community to be dominated by organisms that are adapted to a sandy environment. The benthic species, densities and diversities collected during these studies were typical of the nearshore sandy environment along the Oregon coast.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3)).

The proposed Sites are approximately 2 nautical miles off the beach in water depths greater than 100 feet and beyond the ecologically and economically important Yaquina Reef. Given the depth of these Sites, the material is not expected to disperse from the Sites except during infrequent large storm events. Thus, impacts to beaches or the reef will be avoided. The sand removed from the Newport littoral cell is not expected to affect Newport's beaches because Pacific Northwest beaches tend to respond strongly to storm effects, the episodic nature of which would mask any long-term discrete changes such as disposal at these Sites. Site monitoring and adaptive management are components of the proposed SMMP to ensure beaches and other amenity areas are not adversely impacted.

4. Types and Quantities of Wastes Proposed to be Disposed of, and Proposed Methods of Release, including Methods of Packing the Waste, if any (40 CFR 228.6(a)(4)).

Dredged material found suitable for ocean disposal pursuant to the regulatory criteria for dredged material, or characterized by chemical and biological testing and found suitable for disposal into ocean waters, will be the only material allowed to be disposed at the Sites. No material defined as ''waste'' under the MPRSA will be allowed to be disposed at the Sites. The dredged material to be disposed at the Sites will be predominantly marine sand. Generally, disposal is expected to occur from a hopper dredge, in which case, material will be released just below the surface while the disposal vessel remains under power and slowly transits the disposal location. This method of release is expected to spread material at the Sites to minimize mounding, while minimizing impacts to the benthic community and to aquatic species present at the Sites at the time of a disposal event.

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5)).

The EPA expects monitoring and surveillance at the Sites to be feasible and readily performed from small, surface research vessels. The EPA will ensure monitoring of the sites for physical, biological and chemical attributes. Bathymetric surveys will be conducted annually, contaminant levels in the dredged material will be analyzed prior to dumping, and the benthic infauna and epibenthic organisms will be monitored every 5 years, as funding allows.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, including Prevailing Current Direction and Velocity, if any (40 CFR 228.6(a)(6)).

Disposal at the proposed Sites will not degrade the existing wave environment within or outside the Sites. The placement of dredged material may have a minor effect on circulation within or outside the site boundaries. Due to the size of the mound resulting from the accumulated dredged material (10–14 feet high covering 597 acres) over 20 years, it is possible the currents in the vicinity of the Sites may be affected. Any potential effect would not be expected to occur until a substantial amount of dredged material has been placed at the site (4–6 million cubic yards). At that time, the EPA plans to re-assess these assumptions and associated potential effects. Currently, disposal has occurred at the North Site for 10 years with a total disposal volume of approximately 2.2 million cubic yards.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (including Cumulative Effects) (40 CFR 228.6(a)(7)).

The proposed North Site was used for disposal of dredged material from 2001 to 2011. The seafloor elevation at the Site has risen 12 feet in a few locations. Annual bathymetric surveys will continue to be conducted to monitor mounding at the North Site. To date disposal of dredged material has not changed the benthic infaunal nor epifaunal species expected to inhabit nearshore sandy substrates at this location. The South Site, selected by the Corps under their Section 103 authority under the MPRSA, has never been used. Preferential use of the North Site is expected at this time, but capacity and other factors may result in more frequent use of the South Site in the future. The proposed SMMP includes monitoring and adaptive management measures to address potential mounding issues.

8. Interference with Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8)).

The proposed Sites are not expected to interfere with shipping, fishing, recreation or other legitimate uses of the ocean. Commercial and recreational fishing and commercial navigation are the primary activities that may spatially overlap with disposal at the Sites. This overlap is more likely at the South Site given the South Site's proximity to the commercial shipping lane and a more direct alignment with the entrance channel to Yaquina Bay. The likelihood of direct interference with these activities is low, provided there is close communication and coordination among users, vessel traffic control and the U.S. Coast Guard. The EPA is not aware of any plans for mineral extraction, desalination plants, or fish and shellfish culture operations near the proposed Sites at this time. The proposed Sites are not located in areas of special scientific importance. They are located to the south of the Newport Hydrographic line, south of the proposed Northwest National Marine Renewable Energy Center's nearshore test facility, and west of the Yaquina Reef.

9. The Existing Water Quality and Ecology of the Sites as Determined by Available Data or Trend Assessment of Baseline Surveys (40 CFR 228.6(a)(9)).

The EPA has not identified any potential adverse water quality impacts from the proposed ocean disposal of dredged material at the Sites based on water and sediment quality analyses conducted in the study area of the Sites, and based on past disposal experience at the proposed North Site when it was used as a Section 103 selected site. Benthic grabs and trawl data show the ecology of the area to be that associated with sandy nearshore substrate typical of the Oregon Coast.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10)).

Nuisance species, considered as any undesirable organism not previously existing at a location, have not been observed at, or in the vicinity of, the proposed Sites. Material expected to be disposed at the Sites will be uncontaminated marine sands similar to the sediment present at the Sites. Some fine-grained material, finer than natural background, may also be disposed. While this finer-grained material could have the potential to attract nuisance species to the Sites, no such recruitment is known to have taken place at the proposed North Site while the Site was used as a Section 103 selected site. The proposed SMMP includes benthic infaunal and epifaunal monitoring requirements, which will act to identify any nuisance species and allow the EPA to direct special studies and/or operational changes to address the issue if it arises.

1. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Feature of Historical Importance (40 CFR 228.6(a)(11)).

No significant cultural features have been identified at, or in the vicinity of, the proposed Sites at this time. The EPA is coordinating with Oregon's State Historic Preservation Officer and with Tribes in the vicinity of the Sites to identify any cultural features. The EPA expects to complete that coordination effort before making a final decision on the proposed Sites. No shipwrecks have been observed or documented within the proposed Sites or their immediate vicinity.

III. Environmental Statutory Review—National Environmental Policy Act (NEPA); Magnuson-Stevens Act (MSA); Marine Mammal Protection Act (MMPA); Coastal Zone Management Act (CZMA); Endangered Species Act (ESA); National Historic Preservation Act (NHPA)

A. NEPA

Section 102 of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321 to 4370f, requires Federal agencies to prepare an Environmental Impact Statement (EIS) for major federal actions significantly affecting the quality of the human environment. NEPA does not apply to EPA designations of ocean disposal sites under the MPRSA because the courts have exempted the EPA's actions under the MPRSA from the procedural requirements of NEPA through the functional equivalence doctrine. The EPA has, by policy, determined that the preparation of NEPA documents for certain EPA regulatory actions, including actions under the MPRSA, is appropriate. The EPA's ''Notice of Policy and Procedures for Voluntary Preparation of NEPA Documents,'' (Voluntary NEPA Policy), 63 FR 58045, (October 29, 1998), sets out both the policy and procedures the EPA uses when preparing such environmental review documents. The EPA's primary voluntary NEPA document for designating the Sites is the draft *Yaquina Bay, Oregon Ocean Dredged Material Disposal Sites Evaluation Study and Environmental Assessment, [February 2012]* (EA), jointly prepared by the EPA and the Corps. The draft EA and its Technical Appendices, which are part of the docket for this action, provide the threshold environmental review for designation of the two Sites. The information from the proposed EA is used above, in the discussion of the ocean dumping criteria.

B. MSA and MMPA

The EPA prepared an essential fish habitat (EFH) assessment pursuant to Section 305(b), 16 U.S.C. 1855(b)(2), of the Magnuson-Stevens Act, as amended (MSA), 16 U.S.C. 1801 to 1891d, and submitted that assessment to the National Marine Fisheries Service (NMFS) on December 19, 2011. NMFS is reviewing the EPA's EFH assessment and an Endangered Species Act (ESA) Biological Assessment and addendum thereto for purposes of the Marine Mammal Protection Act of 1972, as amended (MMPA), 16 U.S.C. 1361 to 1389. The EPA will not take final action on the proposed Sites until the NMFS review is complete.

C. CZMA

The Coastal Zone Management Act, as amended (CZMA), 16 U.S.C. 1451 to 1465, requires Federal agencies to determine whether their actions will be consistent to the extent practicable with the enforceable policies of approved state programs. The EPA prepared a consistency determination for the Oregon Coastal Management Program (OCMP), the approved state program in Oregon, to meet the requirements of the CZMA and submitted that determination to the Oregon Department of Land Conservation and Development (DLCD) for review on February 17, 2012. The EPA will not take final action on the proposed Sites until the DLCD review of EPA's consistency determination is complete.

D. ESA

The Endangered Species Act, as amended (ESA), 16 U.S.C. 1531 to 1544, requires Federal agencies to consult with NMFS and the U.S. Fish and Wildlife Service (USFWS) to ensure that any action authorized, funded, or carried out by the Federal agency is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of any critical habitat. The EPA prepared a Biological Assessment (BA) to assess the potential effects of designating the two proposed Sites on aquatic and wildlife species and submitted that BA to the NMFS and USFWS on December 19, 2011. The EPA found that site designation does not have a direct impact on any of the identified ESA species, and also found that indirect impacts associated with reasonably foreseeable future disposal activities had to be considered. These anticipated indirect impacts from disposal included a short-term increase in suspended sediment, short-term disruption in avian foraging behavior, modification of bottom topography, loss of benthic prey species from burial, and loss of pelagic individuals during disposal of material through the water column. The EPA concluded that its action may affect, but is not likely to adversely affect 18 ESA-listed species and is not likely to adversely affect designated critical habitat for southern green sturgeon (*Acipenser medirostris*) but is likely to adversely affect Oregon Coast coho salmon (*Oncorhynchus kisutch*). The USFWS concurred on EPA's finding that the proposed action is not likely to adversely affect listed endangered or threatened species under the

jurisdiction of the USFWS. The EPA will not take final action on the proposed Sites until consultation with NMFS under the ESA is complete.

E. NHPA

The EPA initiated consultation with the State of Oregon's Historic Preservation Officer (SHPO) on February 27, 2012, to address the National Historic Preservation Act, as amended (NHPA), 16 U.S.C. 470 to 470a–2, which requires Federal agencies to take into account the effect of their actions on districts, sites, buildings, structures, or objects, included in, or eligible for inclusion in the National Register. The EPA determined that no historic properties were affected, or would be affected, by designation of the Sites. The EPA did not find any historic properties within the geographic area of the Sites. This determination was based on a review of the National Register of Historic Districts in Oregon, the Oregon National Register list and an assessment of potential cultural resources near the Sites. The EPA will not take final action on the proposed Sites until the coordination with the SHPO is complete.

IV. Statutory and Executive Order Reviews

This rule proposes the designation of two ocean dredged material disposal sites pursuant to Section 102 of the MPRSA. This proposed action complies with applicable executive orders and statutory provisions as follows:

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

In this proposed site designation, the EPA does not reasonably anticipate collection of information from ten or more people based on the historic use of designated sites. Consequently, the proposed action is not subject to the Paperwork Reduction Act.

C. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this rule on small entities, small entity is defined as: A small business defined by the Small Business Administration's size regulations at 13 CFR 121.201; a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The EPA determined that this proposed action will not have a significant economic impact on small entities because the proposed rule will only have the effect of regulating the location of sites to be used for the disposal of dredged material in ocean waters. After considering the economic impacts of this proposed rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

This proposed action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1531 to 1538, for State, local, or tribal governments or the private sector. This action imposes no new enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small government entities. Those entities are already subject to existing permitting requirements for the disposal of dredged material in ocean waters.

E. Executive Order 13132: Federalism

This proposed action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between the EPA and State and local governments, the EPA specifically solicits comment on this proposed action from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This proposed action does not have tribal implications, as specified in Executive Order 13175 because the designation of the two ocean dredged material disposal Sites will not have a direct effect on Indian Tribes, on the relationship between the federal government and Indian Tribes, or on the distribution of power and responsibilities between the federal government and Indian Tribes. Thus, Executive Order 13175 does not apply to this action. Although Executive Order 13175 does not apply to this proposed action the EPA consulted with tribal officials in the development of this action, particularly as the action relates to potential impacts to historic or cultural resources. The EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under Section 5–501 of the Executive Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. The proposed action concerns the designation of two ocean dredged material disposal sites and only has the effect of providing designated locations to use for ocean disposal of dredged material pursuant to Section 102(c) of the MPRSA. We welcome comments on this proposed action related to this Executive Order.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) because it is not a ''significant regulatory action'' as defined under Executive Order 12866. We welcome comments on this proposed action related to this Executive Order.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed action includes environmental monitoring and measurement as described in EPA's proposed SMMP. The EPA will not require the use of specific, prescribed analytic methods for monitoring and managing the designated Sites. The Agency plans to allow the use of any method, whether it constitutes a voluntary consensus standard or not, that meets the monitoring and measurement criteria discussed in the proposed SMMP. The EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this proposed action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

Executive Order 12898 (59 FR 7629) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The EPA has assessed the overall protectiveness of designating the disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable. We welcome comments on this proposed action related to this Executive Order.

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Authority: This action is issued under the authority of Section 102 of the Marine Protection, Research, and Sanctuaries Act, as amended, 33 U.S.C. 1401, 1411, 1412.

Dated: March 20, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

For the reasons set out in the preamble, The EPA proposes to amend chapter I, title 40 of the Code of Federal Regulations as follows:

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (n)(15) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(15) Yaquina Bay, OR—North and South Ocean Dredged Material Disposal Sites.

(i) North Site.

(A) *Location:* 44°38′17.98″ N, 124°07′25.95″ W, 44°38′12.86″ N, 124°06′31.10″ W, 44°37′14.33″ N, 124°07′37.57″ W, 44°37′09.22″ N, 124°06′42.73″ W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares).

(C) *Depth:* Ranges from approximately112 to 152 feet (34 to 46 meters).

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing use.

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13 from the Yaquina Bay and River navigation channel and adjacent areas;

(*2*) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(*3*) Monitoring, as specified in the SMMP, is required.

(ii) South Site

(A) *Location:* 44°36′04.50″ N, 124°07′52.66″ W, 44°35′59.39″ N, 124°06′57.84″ W, 44°35′00.85″ N, 124°08′04.27″ W, 44°34′55.75″ N, 124°07′09.47″ W.

(B) *Size:* Approximately 1.07 nautical miles long and 0.66 nautical miles wide (0.71 square nautical miles); 597 acres (242 hectares).

(C) *Depth:* Ranges from approximately 112 to 152 feet (34 to 46 meters).

(D) *Primary Use:* Dredged material.

(E) *Period of Use:* Continuing use.

(F) *Restrictions:* (*1*) Disposal shall be limited to dredged material determined to be suitable for ocean disposal according to 40 CFR 227.13, from the Yaquina Bay and River navigation channel and adjacent areas;

(*2*) Disposal shall be managed by the restrictions and requirements contained in the currently-approved Site Management and Monitoring Plan (SMMP);

(*3*) Monitoring, as specified in the SMMP, is required.

[FR Doc. 2012–8193 Filed 4–4–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252

[DFARS Case 2011–D056]

RIN 0750–AH63

Defense Federal Acquisition Regulation Supplement: Solicitation Provisions and Contract Clauses for Acquisitions of Commercial Items

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to simplify prescriptions for provisions and clauses that are applicable to the acquisition of commercial items and to specify flowdown of clauses to commercial subcontracts.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before June 4, 2012, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2011–D056, using any of the following methods:

○ *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by entering ''DFARS Case 2011–D056'' under the heading ''Enter keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''DFARS Case 2011–D056.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''DFARS Case 2011–D056'' on your attached document.

○ *Email: dfars@osd.mil.* Include DFARS Case 2011–D056 in the subject line of the message.

○ *Fax:* 571–372–6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Dr. Laura Welsh, OUSD (AT&L) DPAP/DARS, Room 3B855, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Dr. Laura Welsh, telephone 571–372–6091.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to support the use of automated contract writing systems. The clause at DFARS 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items, requires the contracting officer to ''check a box'' to identify the clauses that are applicable to each commercial item acquisition. This requirement is not compatible with most automated contract writing systems. Section 8002 of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355) requires that the regulations shall contain a list of contract clauses to be included in contracts for the acquisition of commercial end items. Each time a clause or clause alternate is added, DoD must consider whether the clause or clause alternate will be applicable to commercial items. The law does not require that this list be in the form of a clause, requiring clause dates for each applicable clause that must be revised every time a clause on the list is modified.

Furthermore, clause flowdown to commercial subcontracts is controlled by paragraph (c) of the clause 252.212–7001 for commercial contracts under FAR part 12 and clause 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts). These lists of clauses that require flowdown to commercial subcontracts likewise require update every time a clause on the list is modified.

II. Discussion and Analysis

DoD proposes the following changes to facilitate the use of automated contract writing systems and reduce the need for constant update of clause dates on multiple lists.

• Revise DFARS 212.301(f) to—

—Provide a single list of all fifty-eight provisions and clauses that currently apply to DoD solicitations and contracts for the acquisition of commercial items. Where any provision or clause is included to implement statutes or executive orders that are applicable to defense acquisitions of commercial items, the particular statute or Executive order is identified following the location of the prescription for each provision or clause. All provisions and clauses currently listed in DFARS 212.301(f) that are applicable to DoD solicitations and contracts for the acquisition of commercial items are retained in the revised list.

—Add DFARS provision 252.203–7005, Representation Relating to Compensation of Former DoD Officials. This provision's application to the acquisition of commercial items was inadvertently omitted from case 2010–D020 when the final rule was published on November 18, 2011 (76 FR 71826).

—Add the two provisions currently contained in DFARS provision 252.212–7000, Offeror Representations and Certifications—Commericial Items.

—Add one FAR clause and thirty-one DFARS clauses (inclusive of alternates) currently contained in DFARS clause 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

—Add two DFARS provisions and two DFARS clauses in support of operations in Iraq or Afghanistan: provision 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products; provision 252.225–7023, Preference for Products or Services from Iraq or Afghanistan; clause 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan; and clause 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan. These provisions' and clauses' application to the acquisition of commercial items in support of operations in Iraq or Afghanistan was inadvertently omitted from case 2008–D002 when the final rule was published on April 8, 2010 (75 FR 18035).

—Add DFARS provision 252.225–7037, Evaluation of Offers for Air Circuit Breakers. This provision's application to the acquisition of commercial items was inadvertently omitted from case 2002–D009 when the final rule was published in the **Federal Register** on March 31, 2003 (68 FR 15616), with an effective date of April 30, 2003. This provision is the companion to DFARS clause 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, which is currently listed at paragraph (b)(17) of DFARS clause 252.212–7001.

—Revise clause 252.244–7000, Subcontracts for Commercial Items, to address the requirements regarding flow down of clauses to subcontracts of commercial items currently contained in paragraph (c) of clause 252.212–7001.

—Add DFARS clause 252.247–7025, Reflagging or Repair Work. This clause's application to the acquisition of commercial items was inadvertently omitted from case 95–D712 for the commercial item implementation of the Federal Acquisition Streamlining Act of 1994 (FASA) when the final rule was published in the **Federal Register** on November 1, 2001 (66 FR 55151). All other clauses contained in DFARS 247.574 for ocean transportation by U.S.-flag vessels are listed as applicable to the defense acquisition of commercial items. Time charter acquisitions of vessels are commercial by their very nature. Further, 10 U.S.C. 2631 is not listed in DFARS 212.503(a) as a law not applicable to commercial contracts.

—Add provision and clause alternates that are applicable to commercial items that were previously inadvertently omitted from either DFARS 212.301(f) or DFARS clause 252.212–7001. Alternates were added as applicable to: Clause 252.219–7003, Small Business Subcontracting Plan; provision 252.225–7000, Buy American Act–Balance of Payments Program Certificate; provision 252.225–7020, Trade Agreements Certificate; provision 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate; clause 252.227–7013, Rights in Technical Data—

Noncommercial Items; and clause 252.227–7015, Technical Data—Commercial Items.

—Delete DFARS provision 252.212–7000, Offeror Representations and Certifications—Commercial Items, and DFARS clause 252.212–7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items. These deletions support the use of automated contract writing systems. Rather than requiring the contracting officers to ''check the applicable clauses,'' the automated contract writing systems can be used to automatically select the applicable clauses, saving the DoD time and scarce resources.

• Revise the prescriptions for each of the fifty-eight provisions and clauses, including alternates, in the revised list at DFARS 212.301(f) to indicate that they are specifically used in solicitations or contracts using FAR part 12 procedures for the acquisition of commercial items. The phrase ''including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items'' was used in lieu of a simpler phrase such as ''including commercial item solicitations and contracts'' as FAR 12.102(f) and (g) allow for the use of part 12 procedures for items that do not meet the definition of a commercial item defined at FAR 2.101.

• Make technical corrections to—

—The prescription at 232.908.

—Provide the location of prescriptions for provisions and clauses for the following: 252.203–7000, 252.211–7003, and 252.227–7037.

—Provide the locations of definitions missing in 247.571 and to provide the statutory citations missing in 247.572.

• Revise DFARS clause 252.244–7000, Subcontracts for Commercial Items and Commercial Components (DoD Contracts), to indicate that the contractor is not required to flow down the terms of any DFARS clause in subcontracts for commercial items unless so specified in the particular clause.

• Revise the last paragraph of the following clauses to state that the terms should flow down to subcontracts for commercial items: 252.211–7003; 252.225–7009; 252.225–7039; 252.227–7013; 252.227–7015; 252.227–7037; 252.236–7013; 252.237–7010; 252.237–7019; 252.246–7003; 252.247–7003; and 252.247–7023. The list of clauses requiring flow down of clause terms to subcontracts for commercial items was obtained from paragraph (c) of DFARS clause 252.212–7001 and the list contained in the current DFARS clause 252.244–7000, with the addition of clause 252.211–7003, which was previously inadvertently omitted from both lists in case 2003–D081 when the final rule was published in the **Federal Register** on April 22, 2005 (70 FR 20831). However, clause 252.247–7024 did not require revision as it already contained language specifically requiring flow down to subcontracts for commercial items.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule aims to only change the appearance of how commercial provisions and clauses are presented within commercial acquisitions and there are no substantive changes. However, an initial regulatory flexibility analysis has been performed and is summarized as follows.

The purpose of this case is to support the use of automated contract writing systems. The clause at DFARS 252.212–7001 requires the contracting officer to ''check a box'' to identify the clauses that are applicable to each commercial item acquisition. Rather than requiring the contracting officers to ''check the applicable clauses,'' this proposed rule will allow automated contract writing systems to automatically select the applicable clauses, saving DoD time and scarce resources.

Potential offerors, including small businesses, may be affected by this rule only to the extent of seeing an unfamiliar format for clauses in commercial item acquisitions issued by any DoD contracting activities that do not already currently deviate from the current DFARS requirement to ''check a box.'' There were 273,042 new contracts, agreements, and purchase orders awarded in Fiscal Year 2011 using FAR part 12 procedures for the acquisition of commercial items, and 71,950 of these actions (26.35%) were awarded to small businesses. It is unknown how many of these actions were awarded using a deviation from DFARS clause 252.212–7001. Nothing substantive will change in commercial acquisitions for potential offerors, and only the appearance of how applicable clauses are presented will be changed. This rule may result in potential offerors, including small businesses, expending more time to become familiar with and to understand the new clause format issued by any DoD contracting activities not presently operating under the existing deviation. The burden caused by this rule is expected to be minimal and will not be any greater on small businesses than it is on large businesses.

This rule does not add any new information collection requirements. The information collection burden required by DFARS provisions 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, and 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, is already covered and approved under OMB Control Number 0704–0229 entitled Foreign Acquisitions. These provisions are variants of the other existing foreign acquisition reporting burdens already used and covered for commercial acquisitions (excluding commercial information technology).

The rule does not duplicate, overlap, or conflict with any other Federal rules.

No alternatives were identified that will accomplish the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2011–D056), in correspondence.

V. Paperwork Reduction Act

This rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C chapter 35). The commercial clauses

currently approved for use in commercial contracts, which may impose any information collection burden on contractors or any subcontractors, are already covered by an existing approved OMB clearance. The burdens for all existing commercial clauses are not changed in any way by this proposed rule. Two DFARS provisions, with an associated information collection burden, are newly identified by this rule as being applicable to acquisitions of commercial items: 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products; and 252.225–7023, Preference for Products or Services from Iraq of Afghanistan. The information collection burdens associated with these two DFARS provisions are already fully covered and cleared under OMB Control Number 0704–0229 entitled Foreign Acquisitions. These two provisions are variants of the other existing foreign acquisition provisions with reporting burdens already in use and covered for commercial acquisitions (excluding commercial information technology).

List of Subjects in 48 CFR Parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252

Government procurement.

Mary Overstreet,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 203, 204, 205, 209, 211, 212, 219, 225, 226, 227, 232, 237, 243, 244, 246, 247, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Section 203.171–4 is revised to read as follows:

203.171–4 Solicitation provision and contract clause.

(a) Use the clause at 252.203–7000, Requirements Relating to Compensation of Former DoD Officials, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

(b) Use the provision at 252.203–7005, Representation Relating to Compensation of Former DoD Officials, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, including solicitations for task and delivery orders.

3. Section 203.1004(a) is revised to read as follows:

203.1004 Contract clauses.

(a) Use the clause at 252.203–7003, Agency Office of the Inspector General, in solicitations and contracts that include the FAR clause 52.203–13, Contractor Code of Business Ethics and Conduct, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

* * * * *

PART 204—ADMINISTRATIVE MATTERS

4. Section 204.7109(b) is revised to read as follows:

204.7109 Solicitation provision and contract clause.

* * * * *

(b) Use the provision at 252.204–7011, Alternative Line Item Structure, in solicitations using FAR part 12 procedures for the acquisition of commercial items or for initial provisioning spares.

PART 205—PUBLICIZING CONTRACT ACTIONS

5. Section 205.470 is revised to read as follows:

205.470 Contract clause.

Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, in solicitations and contracts expected to exceed $1,000,000, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. This clause implements 10 U.S.C. 2416.

PART 209—CONTRACTOR QUALIFICATIONS

6. Section 209.104–70(a) is revised to read as follows:

209.104–70 Solicitation provisions.

(a) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, expected to result in contracts of $150,000 or more. Any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror shall be forwarded through agency channels to the address at 209.104–1(g)(i)(C).

* * * * *

PART 211—DESCRIBING AGENCY NEEDS

7. Section 211.274–6(a)(1) is revised to read as follows:

211.274–6 Contract clauses.

(a)(1) Use the clause at 252.211–7003, Item Identification and Valuation, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

* * * * *

8. Section 211.275–3 is revised to read as follows:

211.275–3 Contract clause.

Use the clause at 252.211–7006, Passive Radio Frequency Identification, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require shipment of items meeting the criteria at 211.275–2, and complete paragraph (b)(1)(ii) of the clause as appropriate.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

9. Section 212.301 is revised to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) The following additional provisions and clauses apply to DoD solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items. If the offeror has completed any of the following provisions listed in this paragraph electronically as part of its annual representations and certifications at *https://www.acquisition.gov,* the contracting officer shall consider this information instead of requiring the offeror to complete these provisions for a particular solicitation.

(i) Use the FAR clause at 52.203–3, Gratuities, as prescribed in FAR 3.202, to comply with 10 U.S.C. 2207.

(ii) Use the clause at 252.203–7000, Requirements Relating to Compensation of Former DoD Officials, as prescribed in 203.171–4(a), to comply with section 847 of Public Law 110–181.

(iii) Use the clause at 252.203–7003, Agency Office of the Inspector General, as prescribed in 203.1004(a), to comply with section 6101 of Public Law 110–252 and 41 U.S.C. 3509.

(iv) Use the provision at 252.203–7005, Representation Relating to

Compensation of Former DoD Officials, as prescribed in 203.171–4(b).

(v) Use the provision at 252.204–7011, Alternative Line Item Structure, as prescribed in 204.7109(b).

(vi) Use the clause at 252.205–7000, Provision of Information to Cooperative Agreement Holders, as prescribed in 205.470, to comply with 10 U.S.C. 2416.

(vii) Use the provision at 252.209–7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, as prescribed in 209.104–70(a), to comply with 10 U.S.C 2327(b).

(viii) Use the clause at 252.211–7003, Item Identification and Valuation, as prescribed in 211.274–6(a).

(ix) Use the provision at 252.211–7006, Passive Radio Frequency Identification, as prescribed in 211.275–3.

(x) Use the clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), as prescribed in 219.708(b)(1)(A)*(1),* to comply with 15 U.S.C. 637. Use the clause with its Alternate I as prescribed in 219.708(b)(1)(A)(*2*).

(xi) Use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), as prescribed in 219.708(b)(1)(B), to comply with 15 U.S.C. 637 note.

(xii) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, as prescribed in 225.1101(1)(i), to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act. Use the provision with its Alternate I as prescribed in 225.1101(1)(ii).

(xiii) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, as prescribed in 225.1101(2)(i), to comply with 41 U.S.C. chapter 83 and Executive Order 10582 of December 17, 1954, Prescribing Uniform Procedures for Certain Determinations Under the Buy-American Act. Use the clause with its Alternate I as prescribed in 225.1101(2)(ii).

(xiv) Use the clause at 252.225–7008, Restriction on Acquisition of Specialty Metals, as prescribed in 225.7003–5(a)(1), to comply with 10 U.S.C. 2533b.

(xv) Use the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, as prescribed in 225.7003–5(a)(2), to comply with 10 U.S.C. 2533b.

(xvi) Use the provision at 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, as prescribed in 225.7003–5(b), to comply with 10 U.S.C. 2533b.

(xvii) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, as prescribed in 225.7002–3(a), to comply with 10 U.S.C. 2533a.

(xviii) Use the clause at 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools, as prescribed in 225.7002–3(b), to comply with 10 U.S.C. 2533a.

(xix) Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, as prescribed in 225.7009–5, to comply with section 8065 of Public Law 107–117 and the same restriction in subsequent DoD appropriations acts.

(xx) Use the clause at 252.225–7017, Photovoltaic Devices, as prescribed in 225.7017–4(a), to comply with section 846 of Public Law 111–383.

(xxi) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, as prescribed in 225.7017–4(b), to comply with section 846 of Public Law 111–383.

(xxii) Use the provision at 252.225–7020, Trade Agreements Certificate, as prescribed in 225.1101(5)(i), to comply with 19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note. Use the provision with its Alternate I as prescribed in 225.1101(5)(ii), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxiii) Use the clause at 252.225–7021, Trade Agreements, as prescribed in 225.1101(6)(i), to comply with 19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note. Use the clause with its Alternate I as prescribed in 225.1101(6)(ii), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Use the clause with its Alternate II as prescribed in 225.1101(6)(iii).

(xxiv) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, as prescribed in 225.1101(7), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxv) Use the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, as prescribed in 225.7703–5(a), to comply with section 886 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxvi) Use the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, as prescribed in 225.7703–5(b), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxvii) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, as prescribed in 225.7703–5(c), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxviii) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, as prescribed in 225.7307(a), to comply with 22 U.S.C. 2779.

(xxix) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, as prescribed in 225.7307(b), to comply with 22 U.S.C. 2755.

(xxx) Use the provision at 252.225–7031, Secondary Arab Boycott of Israel, as prescribed in 225.7605, to comply with 10 U.S.C. 2410i.

(xxxi) Use the provision at 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, as prescribed in 225.1101(10)(i), to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Use the provision with its Alternate I as prescribed in 225.1101(10)(ii). Use the provision with its Alternate II as prescribed in 225.1101(10)(iii). Use the provision with its Alternate III as prescribed in 225.1101(10)(iv), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxxii) Use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, as prescribed in 225.1101(11)(i)(A), to comply with 41 U.S.C. chapter 83 and 19 U.S.C. 3301 note. Use the clause with its Alternate I as prescribed in 225.1101(11)(i)(B). Use the clause with its Alternate II as prescribed in 225.1101(11)(i)(A), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Use the clause with its Alternate III as prescribed in 225.1101(11)(i)(B), to comply with sections 886 and 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(xxxiii) Use the provision at 252.225–7037, Evaluation of Offers for Air Circuit Breakers, as prescribed in 225.7006–4(a), to comply with 10 U.S.C. 2534(a)(3) as amended by section 814 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

(xxxiv) Use the clause at 252.225–7038, Restriction on Acquisition of Air

Circuit Breakers, as prescribed in 225.7006–4(b), to comply with 10 U.S.C. 2534(a)(3) as amended by section 814 of the National Defense Authorization Act for Fiscal Year 1995 (Pub. L. 103–337) and section 4102(i) of the Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355).

(xxxv) Use the clause at 252.225–7039, Contractors Performing Private Security Functions, as prescribed in 225.370–6, to comply with section 862 of Public Law 110–181, as amended by section 853 of Public Law 110–417 and sections 831 and 832 of Public Law 111–383.

(xxxvi) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402–5(a).

(xxxvii) Use the clause at 252.225–7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed in 225.7403–2.

(xxxviii) Use the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, as prescribed in 226.104, to comply with section 8021 of Public Law 107–248 and similar sections in subsequent DoD appropriations acts.

(xxxix) Use the clause at 252.227—7013, Rights in Technical Data–Noncommercial Items, as prescribed in 227.7103–6(a). Use the clause with its Alternate I as prescribed in 227.7103–6(b)(1). Use the clause with its Alternate II as prescribed in 227.7103–6(b)(2), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, *et seq.*

(xl) Use the clause at 252.227–7015, Technical Data—Commercial Items, as prescribed in 227.7102–4(a)(1), to comply with 10 U.S.C. 2320. Use the clause with its Alternate I as prescribed in 227.7102–4(a)(2), to comply with 10 U.S.C. 7317 and 17 U.S.C. 1301, *et seq.*

(xli) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, as prescribed in part 227.

(xlii) Use the clause at 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports, as prescribed in 232.7004, to comply with 10 U.S.C. 2227.

(xliii) Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, as prescribed in 232.1110.

(xliv) Use the clause at 252.232–7010, Levies on Contract Payments, as prescribed in 232.7102.

(xlv) Use the clause at 252.232–7011, Payments in Support of Emergencies and Contingency Operations, as prescribed in 232.908.

(xlvi) Use the clause at 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel, as prescribed in 237.173–5, to comply with section 1038 of Public Law 111–84.

(xlvii) Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, as prescribed in 237.171–4, to comply with section 1092 of Public Law 108–375.

(xlviii) Use the clause at 252.243–7002, Requests for Equitable Adjustment, as prescribed in 243.205–71, to comply with 10 U.S.C. 2410.

(xlix) Use the clause at 252.244–7000, Subcontracts for Commercial Items, as prescribed in 244.403.

(l) Use the clause at 252.246–7003, Notification of Potential Safety Issues, as prescribed in 246.371(a).

(li) Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, as prescribed in 246.270–4, to comply with section 807 of Public Law 111–84.

(lii) Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, as prescribed in 247.207, to comply with section 884 of Public Law 110–417.

(liii) Use the provision at 252.247–7022, Representation of Extent of Transportation by Sea, as prescribed in 247.574(a).

(liv) Use the clause at 252.247–7023, Transportation of Supplies by Sea, as prescribed in 247.574(b)(1), to comply with the Cargo Preference Act of 1904 (10 U.S.C. 2631(a)). Use the clause with its Alternate I as prescribed in 247.574(b)(2). Use the clause with its Alternate II as prescribed in 247.574(b)(3). Use the clause with its Alternate III as prescribed in 247.574(b)(4).

(lv) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, as prescribed in 247.574(c).

(lvi) Use the clause 252.247–7025, Reflagging or Repair Work, as prescribed in 247.574(d), to comply with 10 U.S.C. 2631(b).

(lvii) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade, as prescribed in 247.574(e), to comply with section 1017 of Public Law 109–364.

(lviii) Use the clause at 252.247–7027, Riding Gang Member Requirements, as prescribed in 247.574(f), to comply with section 3504 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

PART 219—SMALL BUSINESS PROGRAMS

10. Section 219.708(b)(1) is revised to read as follows:

219.708 Contract clauses.

(b)(1)(A) Use the clause at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts)—

(1) In solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that contain the clause at FAR 52.219–9, Small Business Subcontracting Plan.

(2) With its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that use Alternate III of 52.219–9, Small Business Subcontracting Plan.

(B) In solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, with contractors that have comprehensive subcontracting plans approved under the test program described in 219.702, use the clause at 252.219–7004, Small Business Subcontracting Plan (Test Program), instead of the clauses at 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), and FAR 52.219–9, Small Business Subcontracting Plan. Include—

(1) FAR clause 52.219–9, Small Business Subcontracting Plan, and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), in the contract for purposes of the contractor flowing these clauses down to subcontractors, except

(2) When the contract will not be reported in FPDS (see FAR 4.606(c)(5)), include FAR clause 52.219–9, Small Business Subcontracting Plan, with its Alternate III and 252.219–7003, Small Business Subcontracting Plan (DoD Contracts), with its Alternate I in the contract for purposes of the contractor flowing these clauses down to subcontractors.

* * * * *

PART 225—FOREIGN ACQUISITION

11. In section 225.370–6, the introductory text is revised to read as follows:

225.370–6 Contract clause.

Use the clause at 252.225–7039, Contractors Performing Private Security Functions, in all solicitations and contracts, including solicitations and

contracts using FAR part 12 procedures for the acquisition of commercial items, to be performed in areas of—

* * * * *

12. Section 225.1101 is amended by—

a. Revising paragraph (1);

b. Revising the introductory text of paragraph (2)(i); and

c. Revising paragraphs (2)(ii); (5); (6)(i), (ii), (iii); (7); (10); and (11)(i).

The revisions read as follows:

225.1101 Acquisition of supplies.

(1)(i) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–2, Buy American Act Certificate. Use the provision in any solicitation, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

(2)(i) Use the clause at 252.225–7001, Buy American Act and Balance of Payments Program, instead of the clause at FAR 52.225–1, Buy American Act—Supplies, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—

* * * * *

(ii) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan

* * * * *

(5)(i) Except as provided in paragraph (7) of this section, use the provision at 252.225–7020, Trade Agreements Certificate, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7021, Trade Agreements.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products in support of operations in Afghanistan.

(6)(i) Use the clause at 252.225–7021, Trade Agreements, instead of the clause at FAR 52.225–5, Trade Agreements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, if the World Trade Organization Government Procurement Agreement applies.

(ii) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, unless the clause at 252.225–7024 has been modified to provide a preference only for the products of Afghanistan.

(iii) Use the clause with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.

* * * * *

(7) Use the provision at 252.225–7022, Trade Agreements Certificate—Inclusion of Iraqi End Products, instead of the provision at FAR 52.225–6, Trade Agreements Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7021, Trade Agreements, with its Alternate I.

* * * * *

(10)(i) Use the provision at 252.225–7035, Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–4, Buy American Act—Free Trade Agreements—Israeli Trade Act Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program.

(ii) Use the provision with its Alternate I in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225–7036 is used with its Alternate I.

(iii) Use the provision with its Alternate II in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225–7036 is used with its Alternate II.

(iv) Use the provision with its Alternate III in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, when the clause at 252.225–7036 is used with its Alternate III.

(11)(i) Except as provided in paragraph (11)(ii) of this section, use the clause at 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program, instead of the clause at FAR 52.225–3, Buy American Act—Free Trade Agreements—Israeli Trade Act, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the items listed at 225.401–70, when the estimated value equals or exceeds $25,000, but is less than $202,000, and a Free Trade Agreement applies to the acquisition.

(A) Use the basic clause in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds $77,494, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the estimated value equals or exceeds $25,000 but is less than $77,494, except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III.

* * * * *

13. Section 225.7002–3 is revised to read as follows:

225.7002–3 Contract clauses.

Unless an exception applies—

(a) Use the clause at 252.225–7012, Preference for Certain Domestic Commodities, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, exceeding the simplified acquisition threshold.

(b) Use the clause at 252.225–7015, Restriction on Acquisition of Hand or Measuring Tools, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, exceeding the simplified acquisition threshold that require delivery of hand or measuring tools.

14. In section 225.7003–5, the introductory text of paragraphs (a)(1), (a)(2), and (b) are revised to read as follows:

225.7003–5 Solicitation provision and contract clauses.

(a) * * *

(1) Use the clause at 252.225–7008, Restriction on Acquisition of Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

* * * * *

(2) Use the clause at 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that—

* * * * *

(b) Use the provision at 252.225–7010, Commercial Derivative Military Article—Specialty Metals Compliance Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items—

* * * * *

15. In section 225.7006–4, the introductory text of paragraphs (a) and (b) are revised to read as follows:

225.7006–4 Solicitation provision and contract clause.

(a) Use the provision at 252.225–7037, Evaluation of Offers for Air Circuit Breakers, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, requiring air circuit breakers for naval vessels unless—

* * * * *

(b) Use the clause at 252.225–7038, Restriction on Acquisition of Air Circuit Breakers, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, requiring air circuit breakers for naval vessels unless—

* * * * *

16. In section 225.7009–5, the introductory text is revised to read as follows:

225.7009–5 Contract clause.

Use the clause at 252.225–7016, Restriction on Acquisition of Ball and Roller Bearings, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, unless—

* * * * *

17. Section 225.7017–4 is amended by—

a. Revising the introductory text of paragraph (a)(1); and

b. Revising paragraphs (a)(2) and (b).

The revisions read as follows:

225.7017–4 Solicitation provisions and contract clauses.

(a)(1) Use the clause at 252.225–7017, Photovoltaic Devices, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, for a contract that—

* * * * *

(2) Use the clause in the resultant contract, including contracts using FAR part 12 procedures for the acquisition of commercial items, if it is a covered contract (i.e., will result in DoD ownership of photovoltaic devices, by means other than DoD purchase as end products).

(b) Use the provision at 252.225–7018, Photovoltaic Devices—Certificate, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, containing the clause at 252.225–7017.

18. Section 225.7307 is revised to read as follows:

225.7307 Contract clauses.

(a) Use the clause at 252.225–7027, Restriction on Contingent Fees for Foreign Military Sales, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for FMS. Insert in paragraph (b)(1) of the clause the name(s) of any foreign country customer(s) listed in 225.7303–4(b).

(b) Use the clause at 252.225–7028, Exclusionary Policies and Practices of Foreign Governments, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the purchase of supplies and services for international military education training and FMS.

19. In section 225.7402–5(a), the introductory text is revised to read as follows:

225.7402–5 Contract clauses.

(a) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225–19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that authorize contractor personnel to accompany U.S. Armed Forces deployed outside the United States in—

* * * * *

20. In section 225.7403–2, the introductory text is revised to read as follows:

225.7403–2 Contract clause.

Use the clause at *252.225–7043,* Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that require performance or travel outside the United States, except for contracts with—

* * * * *

21. Section 225.7605 is revised to read as follows:

225.7605 Solicitation provision.

Unless an exception applies or a waiver has been granted in accordance with 225.7604, use the provision at 252.225–7031, Secondary Arab Boycott of Israel, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items.

22. Section 225.7703–5 is amended by—

a. Revising the introductory text of paragraph (a);

b. Revising paragraph (b); and

c. Revising the introductory text of paragraph (c)(1).

The revisions read as follows:

225.7703–5 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that provide a preference for products or services from Iraq or Afghanistan in accordance with 225.7703–1(a)(1). The contracting officer—

* * * * *

(b) Use the clause at 252.225–7024, Requirement for Products or Services from Iraq or Afghanistan, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that include the provision at 252.225–7023, Preference for Products or Services from Iraq or Afghanistan, and in the resulting contract. If the provision at 252.225–7023 has been modified to provide a preference exclusively for Iraq or exclusively for Afghanistan, in accordance with paragraph (a)(1) of this subsection, the clause at 252.225–7024 shall be modified accordingly.

(c)(1) Use the clause at 252.225–7026, Acquisition Restricted to Products or Services from Iraq or Afghanistan, in solicitations and contracts, including solicitations and contracts using FAR

part 12 procedures for the acquisition of commercial items, that—

* * * * *

PART 226—OTHER SOCIOECONOMIC PROGRAMS

23. Section 226.104 is revised to read as follows:

226.104 Contract clause.

Use the clause at 252.226–7001, Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for supplies or services exceeding $500,000 in value.

Subpart 227.71—Rights in Technical Data

24. In section 227.7102–4, paragraphs (a) and (c) are revised to read as follows:

227.7102–4 Contract clauses.

(a)(1) Except as provided in paragraph (b) of this subsection, use the clause at 252.227–7015, Technical Data–Commercial Items, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the contractor will be required to deliver technical data pertaining to commercial items, components, or processes.

(2) Use the clause at 252.227–7015 with its Alternate I in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the development or delivery of a vessel design or any useful article embodying a vessel design.

* * * * *

(c) Use the clause at 252.227–7037, Validation of Restrictive Markings on Technical Data, in all solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items that include the clause at 252.227–7015 or the clause at 252.227–7013.

25. Section 227.7103–6 is amended by—

a. Revising paragraph (a);

b. Revising the introductory text of paragraph (b)(1); and

c. Revising paragraph (b)(2).

The revisions read as follows:

227.7103–6 Contract clauses.

(a) Use the clause at 252.227–7013, Rights in Technical Data–Noncommercial Items, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the successful offeror(s) will be required to deliver to the Government technical data pertaining to noncommercial items, or pertaining to commercial items for which the Government will have paid for any portion of the development costs (in which case the clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense). Do not use the clause when the only deliverable items are computer software or computer software documentation (see 227.72), commercial items developed exclusively at private expense (see 227.7102–4), existing works (see 227.7105), special works (see 227.7106), or when contracting under the Small Business Innovation Research Program (see 227.7104). Except as provided in 227.7107–2, do not use the clause in architect-engineer and construction contracts.

(b)(1) Use the clause at 252.227–7013 with its Alternate I in research solicitations and contracts, including research solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when the contracting officer determines, in consultation with counsel, that public dissemination by the contractor would be—

* * * * *

(2) Use the clause at 252.227–7013 with its Alternate II in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the development or delivery of a vessel design or any useful article embodying a vessel design.

* * * * *

PART 232—CONTRACT FINANCING

26. Section 232.908 is revised to read as follows:

232.908 Contract clauses.

Use the clause at 252.232–7011, Payments in Support of Emergencies and Contingency Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, in addition to either the approved clause prescribed in FAR 32.908 or paragraph (i)(2) of 52.212–4 in acquisitions that meet the applicability criteria at 232.901(1).

27. In section 232.1110, the introductory text is revised to read as follows:

232.1110 Solicitation provision and contract clauses.

Use the clause at 252.232–7009, Mandatory Payment by Governmentwide Commercial Purchase Card, in solicitations, contracts, and agreements, including solicitations, contracts, and agreements using FAR part 12 procedures for the acquisition of commercial items, when—

* * * * *

28. Section 232.7004 is revised to read as follows:

232.7004 Contract clause.

Except as provided in 232.7002(a), use the clause at 252.232–7003, Electronic Submission of Payment Requests and Receiving Reports, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items.

29. Section 232.7102 is revised to read as follows:

232.7102 Contract clause.

Use the clause at 252.232–7010, Levies on Contract Payments, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, other than those for micropurchases.

PART 237—SERVICE CONTRACTING

30. In section 237.171–4, the introductory text is revised to read as follows:

237.171–4 Contract clause.

Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of services if—

* * * * *

31. Section 237.173–5 is revised to read as follows:

237.173–5 Contract clause.

Insert the clause at 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the provision of services.

PART 243—CONTRACT MODIFICATIONS

32. Section 243.205–71 is revised to read as follows:

243.205–71 Requests for equitable adjustment.

Use the clause at 252.243–7002, Requests for Equitable Adjustment, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, estimated to exceed the simplified acquisition threshold.

PART 244—SUBCONTRACTING POLICIES AND PROCEDURES

33. Section 244.403 is revised to read as follows:

244.403 Contract clause.

Use the clause at 252.244–7000, Subcontracts for Commercial Items, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that contain any of the following clauses:

(1) 252.211–7003, Item Identification and Valuation.

(2) 252.225–7009, Restriction on Acquisition of Certain Articles Containing Specialty Metals.

(3) 252.225–7039, Contractors Performing Private Security Functions.

(4) 252.227–7013, Rights in Technical Data—Noncommercial Items.

(5) 252.227–7015, Technical Data–Commercial Items.

(6) 252.227–7037, Validation of Restrictive Markings on Technical Data.

(7) 252.236–7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.

(8) 252.237–7010, Prohibition on Interrogation of Detainees by Contractor Personnel.

(9) 252.237–7019, Training for Contractor Personnel Interacting with Detainees.

(10) 252.246–7003, Notification of Potential Safety Issues.

(11) 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

(12) 252.247–7023, Transportation of Supplies by Sea.

(13) 252.247–7024, Notification of Transportation of Supplies by Sea.

PART 246—QUALITY ASSURANCE

34. Section 246.270–4 is revised to read as follows:

246.270–4 Contract clause.

Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

35. In section 246.371(a), the introductory text is revised to read as follows:

246.371 Notification of potential safety issues.

(a) Use the clause at 252.246–7003, Notification of Potential Safety Issues, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the acquisition of—

* * * * *

PART 247—TRANSPORTATION

36. Section 247.207 is revised to read as follows:

247.207 Solicitation provisions, contract clauses, and special requirements.

Use the clause at 252.247–7003, Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for carriage in which a motor carrier, broker, or freight forwarder will provide or arrange truck transportation services that provide for a fuel-related adjustment.

37. Section 247.571 is revised to read as follows:

247.571 Definitions.

(a) ''Components,'' ''foreign flag vessel,'' ''ocean transportation,'' ''supplies,'' and ''U.S.-flag vessel,'' as used in this subpart, have the meaning given in the clause at 252.247–7023, Transportation of Supplies by Sea.

(b) ''Reflagging or repair work,'' as used in this subpart, has the meaning given in the clause at 252.247–7025, Reflagging or Repair Work.

(c) ''Covered vessel,'' ''foreign shipyard,'' ''overhaul, repair, and maintenance work,'' ''shipyard,'' and ''U.S. shipyard,'' as used in this subpart, have the meaning given in the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards—Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or Noncontiguous Trade.

38. Section 247.572 is amended by—

a. Revising the introductory text of paragraph (a); and

b. Adding introductory text to paragraph (c).

The revisions read as follows:

247.572 Policy.

(a) In accordance with 10 U.S.C. 2631(a), DoD contractors must transport supplies, as defined in the clause at 252.247–7023, Transportation of Supplies by Sea, exclusively on U.S.-flag vessels unless—

* * * * *

(c) In accordance with 10 U.S.C. 2631(b)—

* * * * *

39. Section 247.574 is amended by—

a. Revising the introductory text of paragraph (a); and

b. Revising paragraphs (b)(1), (c), (d), (e), and (f).

The revisions read as follows:

247.574 Solicitation provisions and contract clauses.

(a) Use the provision at 252.247–7022, Representation of Extent of Transportation by Sea, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, except—

* * * * *

(b)(1) Use the clause at 252.247–7023, Transportation of Supplies by Sea, in all solicitations and resultant contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, except those for direct purchase of ocean transportation services.

* * * * *

(c) Use the clause at 252.247–7024, Notification of Transportation of Supplies by Sea, in all contracts, including contracts using FAR part 12 procedures for the acquisition of commercial items, for which the offeror made a negative response to the inquiry in the provision at 252.247–7022, Representation of Extent of Transportation by Sea.

(d) Use the clause at 252.247–7025, Reflagging or Repair Work, in all time charter solicitations and contracts, including time charter solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the use of a vessel for the transportation of supplies, unless a waiver has been granted in accordance with 247.572(c)(2).

(e) Use the provision at 252.247–7026, Evaluation Preference for Use of Domestic Shipyards–Applicable to Acquisition of Carriage by Vessel for DoD Cargo in the Coastwise or

Noncontiguous Trade, in solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that require a covered vessel for carriage of cargo for DoD. See 247.573–3 for reporting of the information received from offerors in response to the provision. See 247.573–2(c)(3) for the required evaluation criterion.

(f) Use the clause at 252.247–7027, Riding Gang Member Requirements, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, for the charter of, or contract for carriage of cargo by, a U.S.-flag vessel documented under chapter 121 of title 46 U.S.C. Follow the procedures at PGI 247.574.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7000 [Amended]

40. Section 252.203–7000 is amended by—

a. Removing from the introductory paragraph ''201.171–4'' and adding ''201.171–4(a)'' in its place; and

b. Removing from the clause heading ''(JUN 2011)'' and adding ''(DATE)'' in its place.

41. Section 252.211–7003 is amended by—

a. Removing from the clause heading ''(JUN 2011)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (g) to read as follows:

252.211–7003 Item Identification and Valuation.

* * * * *

(g) *Subcontracts.* If the Contractor acquires by subcontract, any item(s) for which unique item identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s), including subcontracts for commercial items.

* * * * *

252.212–7000 [Removed]

42. Section 252.212–7000 is removed.

252.212–7001 [Removed]

43. Section 252.212–7001 is removed.

44. Section 252.225–7009 is amended by—

a. Removing from the clause heading ''(JAN 2011)'' and adding ''(DATE)'' in its place; and

b. Revising the introductory text of paragraph (e) to read as follows:

252.225–7009 Restriction on Acquisition of Certain Articles Containing Specialty Metals.

* * * * *

(e) *Subcontracts.* The Contractor shall insert the substance of this clause in subcontracts, including subcontracts for commercial items, for items containing specialty metals, to the extent necessary to ensure compliance of the end products that the Contractor will deliver to the Government. When inserting the substance of this clause in subcontracts, the Contractor shall—

* * * * *

45. Section 252.225–7039 is amended by—

a. Removing from the clause heading ''(AUG 2011)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (e) to read as follows:

252.225–7039 Contractors Performing Private Security Functions.

* * * * *

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts, including subcontracts for commercial items, that will be performed in areas of contingency operations, complex contingency operations, or other military operations or exercises designated by the Combatant Commander.

* * * * *

46. Section 252.227–7013 is amended by—

a. Removing from the clause heading ''(FEB 2012)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (k)(2) to read as follows:

252.227–7013 Rights in Technical Data–Noncommercial Items.

* * * * *

(k) * * *

(2) Whenever any technical data for noncommercial items, or for commercial items developed in any part at Government expense, is to be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts or other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to noncommercial items, or to any portion of a commercial item that was developed in any part at Government expense, and the clause at 252.227–7015 will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense. No other clause shall be used to enlarge or diminish the Government's, the Contractor's, or a higher-tier subcontractor's or supplier's rights in a subcontractor's or supplier's technical data.

* * * * *

47. Section 252.227–7015 is amended by—

a. Removing from the clause heading ''(DEC 2011)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (e)(2) to read as follows:

252.227–7015 Technical Data–Commercial Items.

* * * * *

(e) * * *

(2) Whenever any technical data related to commercial items developed in any part at private expense will be obtained from a subcontractor or supplier for delivery to the Government under this contract, the Contractor shall use this same clause in the subcontract or other contractual instrument, including subcontracts and other contractual instruments for commercial items, and require its subcontractors or suppliers to do so, without alteration, except to identify the parties. This clause will govern the technical data pertaining to any portion of a commercial item that was developed exclusively at private expense, and the clause at 252.227–7013 will govern the technical data pertaining to any portion of a commercial item that was developed in any part at Government expense.

* * * * *

48. Section 252.227–7037 is amended by—

a. Removing from the introductory paragraph ''227.7102–3(c)'' and adding ''227.7102–4(c)'' in its place;

b. Removing from the clause heading ''(SEP 2011)'' and adding ''(DATE)'' in its place; and

c. Revising paragraph (l) to read as follows:

252.227–7037 Validation of Restrictive Markings on Technical Data.

* * * * *

(l) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in contractual instruments, including subcontracts and other contractual instruments for commercial items, with its subcontractors or suppliers at any tier requiring the delivery of technical data.

* * * * *

49. Section 252.236–7013 is amended by—

a. Removing from the clause heading ''(JAN 2009)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (c) to read as follows:

252.236–7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers.

* * * * *

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material, including subcontracts for the acquisition of commercial items.

* * * * *

50. Section 252.237–7010 is amended by—

a. Removing from the clause heading ''(NOV 2010)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (c) to read as follows:

252.237–7010 Prohibition on Interrogation of Detainees by Contractor Personnel.

* * * * *

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

* * * * *

51. Section 252.237–7019 is amended by—

a. Removing from the clause heading ''(SEP 2006)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (c) to read as follows:

252.237–7019 Training for Contractor Personnel Interacting with Detainees.

* * * * *

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

* * * * *

52. Section 252.244–7000 is revised to read as follows:

252.244–7000 Subcontracts for Commercial Items.

As prescribed in 244.403, use the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (DATE)

(a) The Contractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement clause in subcontracts for commercial items at any tier under this contract unless so specified in the particular clause.

(b) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligation.

(c) The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded at any tier under this contract, including subcontracts for the acquisition of commercial items.

* * * * *

53. Section 252.246–7003 is amended by—

a. Removing from the clause heading ''(JAN 2007)'' and adding ''(DATE)'' in its place; and

b. Revising the introductory text of paragraph (f)(2) to read as follows:

252.246–7003 Notification of Potential Safety Issues.

* * * * *

(f) * * *

(2) For those subcontracts, including subcontracts for commercial items, described in paragraph (f)(1) of this clause, the Contractor shall require the subcontractor to provide the notification required by paragraph (c) of this clause to—

* * * * *

54. Section 252.247–7003 is amended by—

a. Removing from the clause heading ''(SEP 2010)'' and adding ''(DATE)'' in its place; and

b. Revising paragraph (c) to read as follows:

252.247–7003 Pass-Through of Motor Carrier Fuel Surcharge Adjustment to the Cost Bearer.

* * * * *

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, with motor carriers, brokers, or freight forwarders.

* * * * *

55. Section 252.247–7023 is amended by—

a. Removing from the clause heading ''(May 2002)'' and adding ''(DATE)'' in its place;

b. Revising the introductory text of paragraph (h); and

c. Removing from paragraphs (h)(1) and (h)(2) ''Part 2'' and adding ''part 2'' in both places.

The revision reads as follows:

252.247–7023 Transportation of Supplies by Sea.

* * * * *

(h) In the award of subcontracts, for the types of supplies described in paragraph (b)(2) of this clause, including subcontracts for commercial items, the Contractor shall flow down the requirements of this clause as follows:

* * * * *

[FR Doc. 2012–8053 Filed 4–4–12; 8:45 am]

BILLING CODE 5001–06–P

Notices

Federal Register
Vol. 77, No. 66
Thursday, April 5, 2012

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–12–0007]

Plant Variety Protection Board; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: This notice is intended to notify the public of their opportunity to attend an open meeting of the Plant Variety Protection Board.

DATES: April 25 and 26, 2012, 8 a.m. to 5 p.m., open to the public.

ADDRESSES: The meeting will be held in the United States Department of Agriculture George Washington Carver Center, 5601 Sunnyside Avenue, Room 4–2223, Beltsville, MD 20705.

FOR FURTHER INFORMATION CONTACT: Jennifer Banks, Plant Variety Protection Office, Science and Technology Programs, Agricultural Marketing Service, United States Department of Agriculture, 10301 Baltimore Avenue, Beltsville, MD 20705. Telephone number (301) 504–5518, fax (301) 504–5291, or email: *jennifer.banks@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), this notice is given regarding an upcoming Plant Variety Protection (PVP) Board meeting. The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A Certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines. The PVPA also provides for a statutory Board (7 U.S.C. 2327). The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the Act; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules of Practice and on all questions under Section 44 of the Act, ''Public Interest in Wide Usage'' (7 U.S.C. 2404).

The proposed agenda for the PVP Board meeting will include a welcome by Department officials followed by a discussion focusing on program activities that encourage the development of new plant varieties. The agenda will also include presentations on the financial status of the PVP Office, changes to the office workflow as a result of the recently completed business process reengineering study, E-business update, international outreach activities and other related topics.

The meeting will be open to the public. Those wishing to attend the meeting are encouraged to pre-register by April 23, 2012 with the person listed under **FOR FURTHER INFORMATION CONTACT**. Visitors entering the George Washington Carver Center should inform security personnel that they are attending the PVP Board meeting. Identification will be required to be admitted to the building. Security personnel will direct visitors to Room 4–2223. If you require accommodations, such as sign language interpreter, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Minutes of the meeting will be available for public review 30 days following the meeting at the address listed under **FOR FURTHER INFORMATION CONTACT**. The minutes will also be posted on the Internet web site *http://www.ams.usda.gov/AMSv1.0/pvpo.*

Dated: March 30, 2012.

Ruihong Guo,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8126 Filed 4–4–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document Number FV–09–0043]

United States Standards for Grades of Cultivated Ginseng

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Notice.

SUMMARY: The Agricultural Marketing Service (AMS), of the Department of Agriculture (USDA), is revising the voluntary United States Standards for Grades of Cultivated Ginseng. AMS received a request from the Ginseng Board of Wisconsin (GBW), to amend the standards to reflect current market values. To ensure the integrity of the standards, the revisions will be based on quality and percentage defects. The new grades will replace the current ones and promote the orderly and efficient marketing of ginseng in an evolving global economy. Other changes will include a revised General Section, new tolerances, reclassified sizes, removed table ''values'' and amended definitions. These revisions are needed to determine and complement the new grades.

DATES: *Effective Date:* May 7, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Carl Newell, Standardization and Training Branch, Fresh Products Division, (540) 361–1120. The United States Standards for Grades of Cultivated Ginseng are available through the Fresh Products Division Web site at *http://www.ams.usda.gov/freshinspection.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627), as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.'' AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The United States Standards for Grades of Fruits and Vegetables not connected with Federal Marketing Orders or U.S. Import Requirements, no longer appear in the

Code of Federal Regulations, but are maintained by USDA, AMS, Fruit and Vegetable Programs, and are available on the internet at *www.ams.usda.gov/freshinspection.*

AMS is revising the voluntary United States Standards for Grades of Cultivated Ginseng using procedures that appear in Part 36, Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS received a request from the GBW on June 8, 2009, to revise the United States Standards for Grades of Cultivated Ginseng. The GBW represents approximately 95% of the cultivated ginseng industry in the U.S. The initial inquiry requested AMS to add ''unless otherwise specified'' to the size table to accommodate changing market values. AMS believed that by allowing any specified value would undermine the integrity of the standards. To resolve the issue, AMS met with members of the GBW to revise the standards and develop new grades based solely on quality and percentage defects. AMS then initiated the revision process and continued to work closely with the GBW on the proposed standards through electronic communication and site visits. On August 30, 2011, AMS published a notice in the **Federal Register** (76 FR 53875), soliciting comments on a possible revision of the United States Standards for Grades of Cultivated Ginseng. The public comment period closed on September 29, 2011, with no responses.

Based on the information gathered, AMS believes the revisions will bring the standards for cultivated ginseng in line with current marketing practices and thereby improve their usefulness. Therefore, AMS will revise the standards as follows:

The General Section will clarify that the standards apply to cultivated ginseng, such as American ginseng (Panax quinquefolius) and Asian ginseng (Panax ginseng), but not to wild ginseng.

The U.S. Premium, U.S. Select, U.S. Medium, and U.S. Standard grades will be replaced with U.S. No. 1, U.S. No. 2, U.S. No. 3, U.S. No. 4, U.S. No. 5, U.S. No. 6, and U.S. No. 7.

All the sizes for diameter and length are revised with the following Whole Root Size Categories: Premium, Select, and Standard.

The External Color Section is revised to include: ''Color shall be applied to the lot as a whole * * *'' Further, the Wrinkle Section is renamed the Texture Section.

A Size Classification Determination Section will be added to provide procedures for determining size. Size will be determined first, followed by inspecting the ginseng for defects.

The formula for the Grade Determination Section is revised to reflect the percentage of defects in a lot.

The definition for ''Whole Root'' is revised to mean the main root or upper portion of the main root, including any portion growing off the main root that is too large to be a prong. Whole roots must have a tapered top or crown.

The definition for ''Diameter'' is revised to mean the greatest dimension at right angles to a line from the top of the whole root to the tip. Diameter shall not be measured at the point of attachment of a prong or the area where a prong was removed.

A definition for ''Length'' will be added to the standards, which means the greatest dimension of the whole root measured in a straight line parallel to the longitudinal axis from the top of the whole root to the tip, not including any portion of the crown or rootlet, if present.

The following terms and definitions will also be removed or revised: The definition for ''Similar Varietal Characteristics'' will be removed from the standards, since it will not be a requirement of the grade. The definition for ''Prong'' is revised to include: ''A prong cannot exceed more than one half of the diameter of the main root.'' The term ''Fiber' will be renamed ''Rootlet'' and defined as small slender roots less than ⅛ inch in diameter. The term ''rust'' will be removed from the list of defects, since it is the same as discoloration. The definition for ''Cull'' will be revised to mean more than 50 percent of the whole root is unusable. The definition for ''Defects' is revised to include: ''In addition, when the cut area left by a clipped or removed prong exceeds one half of the diameter of the root, it shall be a defect.''

An illustration of a ginseng root will be added to the end of the standards, which define the parts of the root, areas to be clipped, and the correct determination for length and diameter.

Various section numbers will be changed to reflect these revisions, including a correction to the notice. The proposed section number for Grade Determination in the notice was ''.1332'' but will be corrected to ''.1333.''

The official grade of a lot of cultivated ginseng covered by these standards will be determined by the procedures set forth in the Regulations Governing Inspection, Certification, and Standards of Fresh Fruits, Vegetables and Other Products (Sec. 51.1 to 51.61).

The United States Standards for Grades of Cultivated Ginseng will be effective 30 days after publication of this notice in the **Federal Register**.

Authority: 7 U.S.C. 1621—1627.

Dated: March 30, 2012.

Robert C. Keeney,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2012–8135 Filed 4–4–12; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Request an Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act and Office of Management and Budget (OMB) regulations, this notice announces the Agricultural Research Service's (ARS) intention to seek approval to collect information in support of research and related activities.

DATES: Comments on this notice must be received on or before June 4, 2012 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Jill Philpot, ARS Webmaster, 5601 Sunnyside Avenue, Beltsville, MD 20705.

FOR FURTHER INFORMATION CONTACT: Contact Jill Philpot, ARS Webmaster, (301) 504–5683.

SUPPLEMENTARY INFORMATION:

Title: Web Forms for Research Data, Models, Materials, and Publications as well as Study and Event Registration.

Type of Request: Extension and Revision of a Currently Approved Information Collection.

OMB Number: 0518–0032.

Expiration Date: September 30, 2012.

Abstract: Sections 1703 and 1705 the Government Paperwork Elimination Act (GPEA), Public Law 105–277, Title XVII, require agencies, by October 21, 2003, to provide for the option of electronic submission of information by the public. To advance GPEA goals, online forms are needed to allow the public to request from ARS research data, models, materials, and publications as well as registration for scientific studies and events. For the convenience of the public, the forms itemize the information we need to provide a timely response. Information from forms will

only be used by the Agency for the purposes identified.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3 minutes per response (range: 1–5 minutes).

Respondents: Agricultural researchers, students and teachers, business people, members of service organizations, community groups, other federal and local government agencies, and the general public.

Estimated Number Respondents: 15,000. This is a reduction from the 25,000 estimated number of respondents in the previous Approved Information Collection due to less actual annual respondents than originally estimated from 2009–2012.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 750 hours.

Copies of forms used in this information collection can be obtained from Jill Philpot, ARS Webmaster, at (301) 504–5683.

The information collection extension requested by ARS is for a period of three years. comments: Are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 23, 2012.

Edward B. Knipling,

ARS Administrator.

[FR Doc. 2012–8212 Filed 4–4–12; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Tree-Marking Paint Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Tree-Marking Paint Committee will meet in Flagstaff, Arizona on May 15–17, 2012. The purpose of the meeting is to discuss the activities related to improvements in, concerns about, and the handling and use of tree-marking paint by personnel of the Forest Service and the Department of the Interior, Bureau of Land Management.

DATES: The meeting will be held May 15–17, 2012, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the USDA Forest Service Rocky Mountain Research Station, Flagstaff Lab, 2500 South Pine Knoll Drive, Flagstaff, AZ. Persons who wish to file written comments before or after the meeting must send written comments to David Haston, Chairman, National Tree-marking Paint Committee, Forest Service, USDA, San Dimas Technology and Development Center, 444 East Bonita Avenue, San Dimas, California 91773, or electronically to *dhaston@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: David Haston, Sr. Project Leader, San Dimas Technology and Development Center, Forest Service, USDA, (909) 599–1267, extension 294 or *dhaston@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The National Tree-Marking Paint Committee comprises representatives from the Forest Service national headquarters, each of the nine Forest Service regions, the Forest Service San Dimas Technology and Development Center, the National Federation of Federal Employees and the Bureau of Land Management. The Forest Products Laboratory and the National Institute for Occupational Safety and Health are ad hoc members and provide technical advice to the committee.

A field trip will be held on May 15 and is designed to supplement information related to tree-marking paint. This trip is open to any member of the public participating in the public meeting on May 16–17. However, transportation is provided only for committee members.

The main session of the meeting, which is open to public attendance, will be held on May 16–17.

Closed Sessions

While certain segments of this meeting are open to the public, there will be two closed sessions during the meeting. The first closed session is planned for approximately 10 a.m. to 12:00 noon on May 16, 2012. This session is reserved for individual paint manufacturers to present products and information about tree-marking paint for consideration in future testing and use by the agency. Paint manufacturers also may provide comments on tree-marking paint specifications or other requirements. This portion of the meeting is open only to paint manufacturers, the Committee, and committee staff to ensure that trade secrets will not be disclosed to other paint manufacturers or to the public. Paint manufacturers wishing to make presentations to the Tree-Marking Paint Committee during the closed session should contact the committee chairperson at the telephone number listed at **FOR FURTHER INFORMATION** in this notice. The second closed session is planned for approximately 9 a.m. to 11 a.m. on May 17, 2012. This session is reserved for Tree-Marking Paint Committee members only.

Any person with special access needs should contact the Chairperson to make those accommodations. Space for individuals who are not members of the National Tree-Marking Paint Committee is limited and will be available to the public on a first-come, first-served basis.

Dated: March 30, 2012.

Faye L. Krueger,

Associate Deputy Chief, National Forest System.

[FR Doc. 2012–8248 Filed 4–4–12; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, April 13, 2012; 9:30 a.m. EDT.

PLACE: 624 Ninth Street NW., Room 540, Washington, DC 20425.

Briefing Agenda

This briefing is open to the public.

Sex Trafficking as a Gender-Based Violation of Civil Rights

Introductory Remarks by the Chairman
Panel 1
  Panelist Statements
  Discussion
Panel 2
  Panelist Statements
  Discussion
Panel 3
  Panelist Statements
  Discussion
Adjourn Briefing

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda
II. Approval of the March 9, 2012 Meeting Minutes
III. Comments from the USCCR Inspector General
IV. Management and Operations
- Discussion on Agency Staffing
- Staff Director's Report

V. Program Planning Update and discussion of projects
- VRA Statutory Enforcement Report Update

VI. Adjourn Meeting

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact Pamela Dunston at (202) 376–8105 or at *signlanguage@usccr.gov* at least seven business days before the scheduled date of the meeting.

Dated: April 3, 2012.

Kimberly Tolhurst,

Senior Attorney-Advisor.

[FR Doc. 2012–8356 Filed 4–3–12; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XB129

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) has cancelled the public meeting of its Scientific and Statistical Committee (SSC) that was scheduled for Monday, April 16, 2012 beginning at 8 a.m. in Providence, RI.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The initial notice was published on March 30, 2012, (77 FR 19231), and the meeting will be rescheduled at a later date and announced in the **Federal Register**.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 2, 2012.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 2012–8224 Filed 4–4–12; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities; Proposed Collection, Comment Request

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') seeks public comment on the collection of certain information by the Commission under section 745 of the Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). The Paperwork Reduction Act (''PRA'') requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. Section 745 requires the Commission to seek public comment for not less than 30 days with respect to certain industry filings. This notice solicits comments on the provisions of the Commission's final rulemaking on ''Provisions Common to Registered Entities'' under which the Commission would collect comments on the industry filings by publication of documents related to the filings and a request for comments on the Commission's public Web site.[1]

DATES: Comments must be submitted on or before May 7, 2012.

ADDRESSES: You may submit comments, identified by ''Part 40 Notice and Comment Collection,'' by any of the following methods:

- *Agency Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.
- *Hand delivery/Courier:* Same as Mail above.
- *Federal eRulemaking Portal: http://www.regulations.gov/search/index.jsp.* Follow the instructions for submitting comments.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures set forth in § 145.9 of the Commission's regulations.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

For Further Information or a Copy Contact: Bella Rozenberg, Assistant Deputy Director, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5119, *brozenberg@cftc.gov* or Mathew T. Hargrow, Attorney, Office of the General Counsel, (202) 418–5267, *mhargrow@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they collect or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) as ''the obtaining, causing to be obtained, soliciting * * * facts or opinions by or for any agency, regardless of form or format [from] ten or more persons.'' An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires federal agencies to provide a 60-day notice in the **Federal Register** for each proposed collection of information before submitting the collection to OMB for approval. Under OMB regulations, which implement provisions of the PRA, certain ''facts or opinions that are submitted in response to a general solicitation of comments from the public, published in the **Federal Register** or other publications,'' 5 CFR

[1] 76 FR 44776, July 27, 2011.

[2] Commission regulations referred to herein are found at 17 CFR Ch. 1 (2010). Commission regulations are accessible on the Commission's Web site, *www.cftc.gov.*

1320.3(h)(4), or ''facts or opinions obtained or solicited at or in connection with public hearings or meetings,'' 5 CFR 1320.3(h)(8), are excluded from the OMB approval process.

The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on February 15, 2012 (77 FR 8817). In the Commission's final rulemaking on provisions common to registered entities,[3] the Commission seeks to implement section 745 of the Dodd-Frank Act,[4] which amends Section 5c the Commodity Exchange Act (CEA) [5] to enhance compliance by registered entities. This section permits a registered entity to elect to list for trading or accept for clearing any new contract or other instrument, or elect to approve and implement any new rule or rule amendment by providing to the Commission a written certification that the new contract, instrument, rule, or rule amendment complies with the CEA. Such rules or rule amendments become effective after ten (10) business days, unless the Commission notifies the registered entity that it is staying the certification because there exist novel or complex issues that require additional time to analyze, an inadequate explanation by the submitting registered entity, or a potential inconsistency with the CEA. Pursuant to section 745 and the final amendments to part 40 of the Commission's regulations,[6] the Commission will provide a not less than 30-day comment period when it determines that the rule or rule amendment will be stayed. Pursuant to the final rules, the Commission will provide notice of the stay and the request for comment on its Web site, as well as specify the manner in which the public may submit comments.[7]

The Commission initially estimated that approximately 45 entities would be affected by the rule certification procedures.[8] The initial estimate determined that these 45 entities would each have approximately 120 responses per year for a total of 5,400 responses.[9] The Commission has amended these numbers in the final rule such that the estimated number of respondents is increased to 70 entities, the average annual responses by each respondent is decreased to 100. These numbers are based upon comments received regarding the proposed rules as well as changes made by the Commission to streamline the product certification process for certain swap contracts. The Commission anticipates that the mandatory responses to the new collection will take approximate 2 hours per response.

The Commission cannot determine with precision how many of the 7,000 responses it expects to receive will be stayed and subject to the notice and comment requirements of section 745 and the part 40 regulations. The Commission anticipates that only a small fraction of these responses would be stayed and subject to a request for comment via Web site notice, and that each of the stayed rules or rule amendments typically will receive not more than 20 comments, a conservative number based on Commission history with industry filings.

Issued by the Commission this 30th day of March 2012.

David Stawick,

Secretary of the Commission.

[FR Doc. 2012–8131 Filed 4–4–12; 8:45 am]

BILLING CODE P

[3] 75 FR 67282, Nov. 2, 2010.

[4] Public Law 111–203, 124 Stat. 1376 (2010).

[5] 7 U.S.C. 7a.

[6] 75 FR 67282, 67296 (Nov. 2, 2010).

[7] *Id.*

[8] *Id.* at 67290.

[9] *Id.*

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2011–0087]

Petition Requesting Exception from Lead Content Limits; Notice Granting Exception

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (''Commission'' or ''CPSC'' or ''we'') has received a petition requesting an exception from the 100 ppm lead content limit under section 101(b) of the Consumer Product Safety Improvement Act of 2008 (''CPSIA''), as amended by Public Law 112–28. We are granting an exception to the 100 ppm lead content limit for certain aluminum alloy components of children's die-cast, ride-on pedal tractors, and similar component parts made of aluminum alloy on similar ride-on children's products for children ages 3 years and older. Such products may include other children's ride-on tractors, children's ride-on cars, and other ride-on toys. These aluminum alloy components must meet a lead content limit of 300 ppm.

DATES: The effective date is April 5, 2012.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; email: *khatlelid@cpsc.gov.*

SUPPLEMENTARY INFORMATION: Under section 101(a) of the CPSIA, consumer products designed or intended primarily for children 12 years old and younger that contain lead content in excess of 100 ppm are considered to be banned hazardous substances under the Federal Hazardous Substances Act (''FHSA'').

Section 101(b)(1) of the CPSIA provides for a functional purpose exception from the lead content limits, under certain circumstances. The exception allows CPSC, on its own initiative, or upon petition by an interested party, to exclude a specific product, class of product, material, or component part from the lead limits established for children's products under the CPSIA if, after notice and a hearing, we determine that: (i) The product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with section 101(a) of the CPSIA, by removing the excessive lead or by making the lead inaccessible; (ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and (iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse. Under section 101(b)(1)(B) of the CPSIA, there is no measurable adverse effect on public health or safety if the exception will result in no measurable increase in blood lead levels of a child.

On September 29, 2011, Joseph L. Ertl, Inc., Scale Models and Dyersville Die Cast (''petitioner''), submitted a petition requesting an exception from the lead content limit of 100 ppm under section 101(b) of the CPSIA for its die-cast, ride-on pedal tractors, scaled for children ages 3–10 years. Given the highly technical nature of the information sought, including data on the lead content of the product and test methods used to obtain those data, we believe that notice and solicitation for written comments is the most efficient process for obtaining the necessary information, and provides adequate

opportunity for all interested parties to participate in the proceedings. Accordingly, we invited comments on the issues raised by the petition. In the **Federal Register** of November 16, 2011 (76 FR 70975), we invited comments on the issues raised by the petition with comments due on December 16, 2011. On January 5, 2012 (77 FR 478), we reopened the comment period for 30 days, with comments due on February 6, 2012. We received one comment in support of the petition. The commenter stated that pedal tractors with aluminum alloy components cannot practicably be manufactured in accordance with the 100 ppm lead content requirement. The commenter also stated that the aluminum alloy components are not likely to be placed in the mouth or ingested and will not have a measurable adverse effect on public health or safety.

The petitioner stated that the components of its pedal tractors are made of aluminum metal die castings, which are the best alloy of choice for pedal tractor production, based on weight, cost, structural properties, surface finish and coatings, corrosion resistance, bearing properties, and wear resistance. The pedal tractor components are manufactured via the aluminum die-casting process. Although the petitioner stated that it is able to meet the lead content requirements of 300 ppm for its pedal tractor components, it is unable to meet consistently the 100 ppm lead content limits, due to alloys used in the aluminum die-cast process. Accordingly, the petitioner requested an exception from the 100 ppm lead content limit.

For the reasons described in CPSC staff's briefing package, available at *http://www.cpsc.gov/library/foia/foia12/brief/ertl.pdf,* we agree with the petitioner and the commenter that an exception to the 100 ppm lead content limit for certain children's ride-on pedal tractor component parts is appropriate. The petitioner indicated that two aluminum alloys with relatively low lead concentration can be purchased and used to manufacture the pedal tractor products. One of these aluminum alloys (A380.1) may contain more than 300 ppm lead, although the petitioner indicated that this alloy can be obtained, with careful purchasing, with a lead content of no more than 300 ppm. The petitioner indicated that the second aluminum alloy (A413.1) that can be used to manufacture the products is available with less than 200 ppm lead. While the petitioner indicated that it is possible to manufacture their products with the specific alloy with lead content less than 200 ppm, the A380.1 alloy, or a similar alloy, with lead content no more than 300 ppm, is a practicable material for manufacturing the component parts of the pedal tractors because the A380.1 aluminum alloy is one of the most commonly used aluminum alloys in manufacturing and is more readily obtainable from sources than the A413.1 aluminum alloy. In addition, the A413.1 alloy costs $0.99 to $1.65 per unit more than the A380.1 alloy (about 1 percent of the cost of the product), resulting in additional material costs of the product. Obtaining aluminum alloys at 100 ppm or other substitute alloys was considered not practicable for the petitioner. The use of another metal alloy, such as steel, or using plastic molded component parts was not practicable because it would result in completely retooling the manufacturing process and result in products that appeared different from the current product, which uses die-cast component parts.

In addition, the products included in the petition are similar to two types of products that have specific statutory provisions regarding lead content requirements. The CPSIA, as amended by Public Law 112–28, established new provisions for specific exceptions from the 100 ppm lead content requirement. Section 101(b)(5) of the CPSIA provides that the lead content limit does not apply to off-highway vehicles. Section 101(b)(6) of the CPSIA also provides that for metal component parts of bicycles and related products, the lead limit is 300 ppm, not 100 ppm, as otherwise applicable to children's products.

The petitioner's children's ride-on pedal tractors made with aluminum alloys are therefore granted an exception from the 100 ppm lead content limit, and allowed to have a lead limit of 300 ppm instead, because it is not practicable to impose the lower lead limit on such aluminum alloys. These aluminum components include: body castings (right and left sides), rear wheel hubs, wide front axle yokes, wide front-end adaptor brackets, and other component parts that are similar to these parts and are not likely be placed in the mouth or ingested or extensively contacted by children because of their function and location on the product. The exposure to lead in such parts at the 300 ppm limit is expected to be so low that it would have no measurable adverse effect on public health or safety as defined at 15 U.S.C. 1278a(b)(1)(B), taking into account normal and reasonably foreseeable use and abuse.

For the same reasons, children's products that are similar, such as other children's ride-on tractors, children's ride-on cars, and other ride-on toys intended for children ages 3 years and older that contain similar aluminum alloy component parts, including body castings (right and left sides), rear wheel hubs, wide front axle yokes, wide front-end adaptor brackets, and other component parts that are similar to these parts and are not likely to be placed in the mouth or ingested, or extensively contacted by children because of their function and location on the product must meet a lead content limit of 300 ppm for the aluminum alloy component parts. The exposure to lead in these similar component parts is expected to be so low that it would have no measurable adverse effect on public health or safety as defined at 15 U.S.C. 1278a(b)(1)(B), taking into account normal and reasonably foreseeable use and abuse.

Dated: April 2, 2012.

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2012–8187 Filed 4–4–12; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

DAU Industry Day: ''Affordability, Efficiency, and the Industrial Base''

AGENCY: Defense Acquisition University (DAU), DoD.

ACTION: Event notice.

SUMMARY: Mrs. Katrina McFarland, President of Defense Acquisition University, will host a forum with industry to discuss affordability, efficiency, and the industrial base. After a variety of presenters, the session will conclude with Mr. Frank Kendall, Acting Under Secretary of Defense for Acquisition, Technology and Logistics, leading a panel to discuss how we will achieve affordable, efficient programs in this time of fiscal austerity, while maintaining a healthy industrial base. Following the plenary session, each company will have the opportunity to sign up for an individual, non-attribution, 20-minute session with a DAU faculty member. DAU plans to incorporate feedback into changes to the Business Acumen curriculum. The name of the event is DAU Industry Day: ''Affordability, Efficiency, and the Industrial Base''.

DATES: Tuesday, May 1, 2012, from 8:30 a.m.–2 p.m.

ADDRESSES: Howell Auditorium, Building 226, Defense Acquisition

University, 9820 Belvoir Road, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU. *Phone:* 703–805–5134. Fax: 703–805–5940. Email: *christen.goulding@dau.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Event: The purpose of this event is for members of government and industry to discuss affordability, efficiency, and the industrial base. It also offers industry the opportunity to offer input into DAU Business Acumen curriculum.

Agenda

8:30 a.m. Check-in.
9 a.m. Welcome and Introduction.
9:15 a.m. Affordable Programs.
9:55 a.m. Efficiency.
10:25 a.m. Industrial Base.
11 a.m. Industrial Base Policy.
11:30 a.m. Panel Discussion.
12 p.m. Breakout Session One.
12:30 p.m. Breakout Session Two.
1 p.m. Breakout Session Three.
1:30 p.m. Breakout Session Four.

Public's Accessibility to the Event: All attendees must be pre-registered to attend the event. Persons desiring to attend can register online at *https://crs.dau.mil/industry/Default.asp.*

Event Point of Contact: Mr. Bill Parker, 703–805–4979.

Dated: April 2, 2012.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2012–8188 Filed 4–4–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Extension

AGENCY: U.S. Energy Information Administration (EIA), Department of Energy.

ACTION: Agency Information Collection Activities: Information Collection Extension; Notice and Request for Comments.

SUMMARY: EIA, pursuant to the Paperwork Reduction Act of 1995, intends to extend for 3 years the petroleum marketing survey forms listed below with the Office of Management and Budget (OMB):

EIA–14, ''Refiners' Monthly Cost Report;''
EIA–182, ''Domestic Crude Oil First Purchase Report;''
EIA–782A, ''Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report;''
EIA–782C, ''Monthly Report of Prime Supplier Sales of Petroleum Products Sold For Local Consumption;''
EIA–821, ''Annual Fuel Oil and Kerosene Sales Report;''
EIA–856, ''Monthly Foreign Crude Oil Acquisition Report;''
EIA–863, ''Petroleum Product Sales Identification Survey;''
EIA–877, ''Winter Heating Fuels Telephone Survey;''
EIA–878, ''Motor Gasoline Price Survey;''
EIA–888, ''On-Highway Diesel Fuel Price Survey;''

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 4, 2012. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Shawna Waugh. To ensure receipt of the comments by the due date, submission by FAX (202) 586–3873 or email (*Shawna.Waugh@eia.gov*) is recommended. The mailing address is Petroleum and Biofuels Statistics EI–25, Forrestal Building, 1000 Independence Ave., SW., U.S. Department of Energy, Washington, DC 20585–0670. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail or by electronic mail to Shawna Waugh. Alternatively, Shawna Waugh can be contacted by telephone at (202) 586–6484.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Shawna Waugh at the address listed above. Additionally, the draft forms and instructions may be viewed at *http://www.eia.gov/survey.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) OMB No. 1905–0174;

(2) *Information Collection Request Title:* Petroleum Marketing Program;

(3) *Type of Request:* Renewal with change;

(4) *Purpose:*

The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with EIA. Also, EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under Section 3507(a) of the Paperwork Reduction Act of 1995.

EIA's petroleum marketing survey forms collect volumetric and price information needed for determining the supply of and demand for crude oil and refined petroleum products. These surveys provide a basic set of data pertaining to the structure, efficiency, and behavior of petroleum markets. These data are published by EIA on its Web site, *http://www.eia.gov,* as well as in publications such as the *Monthly Energy Review* (*http://www.eia.gov/totalenergy/data/monthly/*), *Annual Energy Review* (*http://www.eia.gov/totalenergy/data/annual/*), *Petroleum Marketing Monthly* (*http://www.eia.gov/oil_gas/petroleum/data_publications/petroleum_marketing_monthly/pmm.html*), *Weekly Petroleum Status Report* (*http://www.eia.gov/oil_gas/petroleum/data_publications/weekly_petroleum_status_report/wpsr.html*), and the *International Energy Outlook* (*http://www.eia.gov/forecasts/ieo/*);

(4a) Proposed Changes to Information Collection:

EIA will be requesting a 3-year extension of approval to continue collecting 10 petroleum marketing surveys (Forms EIA–14, EIA–182, EIA–782A, EIA–782C, EIA–821, EIA–856, EIA–863, EIA–877, EIA–878, and EIA–888) with the only substantive changes

to the survey forms and instructions being the elimination of collecting information on No. 2 diesel fuel low-sulfur categories on Forms EIA–782A, EIA–821, and EIA–888. EIA proposes to discontinue collection of information on No. 2 diesel fuel sales through company-operated outlets for diesel fuel with sulfur content of >15 and <=500 ppm on Form EIA–782A, and the category on-highway diesel fuel use with sulfur content of >15 and <=500 ppm on Form EIA–821. EIA proposes not to collect price information for on-highway low-sulfur diesel fuel on Form EIA–888. The proposed form changes are necessary because of regulations issued by the U.S. Environmental Protection Agency which prohibit the sale of No. 2 diesel fuel with sulfur content of >15 and <=500 ppm for on-highway use. EIA does not seek renewal of the Form EIA–782B,

''Resellers'/Retailers' Monthly Petroleum Product Sales Report,'' as part of this information collection. EIA suspended the use of Form EIA–782B in May 2011, due to resource constraints and notified the respondents in the reporting sample by letter dated May 23, 2011 that they were no longer required to file this report.

Information Collection Burden Estimates

(5) *Annual Estimated Number of Respondents:* 11,953 respondents;

(6) *Annual Estimated Number of Total Responses:* 106,661 responses per year;

(7) *Annual Estimated Number of Burden Hours:* 56,186 hours per year;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* EIA estimates that there are no additional costs to respondents associated with the surveys other than the costs associated with the burden hours.

Statutory Authority: Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93–275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, on March 29, 2012.

Stephanie Brown,

Director, Office of Survey Development and Statistical Integration, U.S. Energy Information Administration.

[FR Doc. 2012–8182 Filed 4–4–12; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–96–000]

El Paso Natural Gas Company; Notice of Application

Take notice that on March 23, 2012, El Paso Natural Gas Company (El Paso), P.O. Box 1087, Colorado Springs, Colorado 80904, filed in the above referenced docket an application pursuant to section 3 of the Natural Gas Act (NGA), for a new Presidential Permit and authorization to construct a new border crossing (Norte Crossing) at the International Boundary between the United States and Mexico in El Paso County, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The Norte Crossing will consist of approximately 1,500 feet of 36-inch pipe with a maximum daily export capacity of 366,000 Mcf/d, designed to transport natural gas to a new delivery interconnect with Tarahumara Pipeline at the United States/Mexico border. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions concerning this application may be directed to Susan C. Stires, Director, Regulatory Affairs Department, El Paso western Pipelines, Two North Nevada Avenue, P.O. Box 1087, Colorado Springs, Colorado 80904, by telephone at (719) 667–7514 or by email at *susan.stires@elpaso.com.*

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of

environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 19, 2012.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8158 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–95–000]

PetroLogistics Natural Gas Storage, LLC; Notice of Application

Take notice that on March 22, 2012, PetroLogistics Natural Gas Storage, LLC (PetroLogistics), 4470 Bluebonnet Blvd., Baton Rouge, Louisiana 70809, filed in Docket No. CP12–95–000, an application pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, to amend its previously authorized certificate of public convenience and necessity issued in Docket Nos. CP07–427–000, CP07–428–000, and CP07–429–000, as amended in Docket No. CP10–66–000. Specifically, PetroLogistics request to amend its certificate by reducing the total capacity, working gas capacity, and cushion gas capacity of its Cavern 25 located in Iberville Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Kevin M. Miller, PetroLogistics Natural Gas Storage, LLC, 4470 Bluebonnet Blvd., Baton Rouge, Louisiana 70809, or by calling (225) 706–7690 (telephone) or email *kmiller@petrologistics.com.*

Pursuant to section 157.9 of the Commission's regulations, 18 CFR 157.9, within 90 days of this Notice, the Commission's staff will either complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission's staff issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to reach a final decision on a request for federal authorization within 90 days of the date of issuance of the Commission staff's EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: April 19, 2012.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8157 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP12–94–000]

Transwestern Pipeline Company, LLC; Notice of Application

Take notice that on March 21, 2012, Transwestern Pipeline Company, LLC (Transwestern), filed in Docket No. CP12–94–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations, requesting authorization to abandon by sale to its affiliate Lone Star NGL Pipeline LP an approximate 59.5 mile segment of its West Texas Lateral in Lea County, New Mexico, and Loving and Winkler Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://*

www.ferc.gov using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Mr. Kelly Allen, Manager of Certificates and Reporting, Transwestern Pipeline Company, LLC, 711 Louisiana Street, Suite 900, Houston, Texas 77002–2716, or by calling (281) 714–2056 (telephone) or (281) 714–2181 (fax).

Pursuant to Section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: April 19, 2012.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8156 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13703–001]

FFP Missouri 2, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent To File License Application and Request To Use the Traditional Licensing Process.

b. *Project No.:* 13703–001.

c. *Date Filed:* January 31, 2012.

d. *Submitted By:* FFP Missouri 2, LLC.

e. *Name of Project:* Enid Lake Hydroelectric Project.

f. *Location:* On the Yocona River in Yalobusha County, Mississippi. The proposed project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ramya Swaminathan, FFP Missouri 2, LLC, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822; or email at *rswaminathan@free-flow-power.com.*

i. *FERC Contact:* Patti Leppert at (202) 502–6034; or email at *patricia.leppert@ferc.gov.*

j. FFP Missouri 2, LLC filed its request to use the Traditional Licensing Process on January 31, 2012. FFP Missouri 2, LLC provided public notice of its request on January 17, January 20, and January 24, 2012. By letter dated March 27, 2012, the Acting Director of the Division of Hydropower Licensing approved FFP Missouri 2, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (1) The U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; (2) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (3) the Mississippi State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FFP Missouri 2, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. FFP Missouri 2, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on

the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8154 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13702–001]

FFP Missouri 2, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13702–001.

c. *Date Filed:* January 31, 2012.

d. *Submitted By:* FFP Missouri 2, LLC.

e. *Name of Project:* Grenada Lake Hydroelectric Project.

f. *Location:* On the Yalobusha River in Grenada County, Mississippi. The proposed project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations

h. *Potential Applicant Contact:* Ramya Swaminathan, FFP Missouri 2, LLC, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822; or email at *rswaminathan@free-flow-power.com.*

i. *FERC Contact:* Patti Leppert at (202) 502–6034; or email at *patricia.leppert@ferc.gov.*

j. FFP Missouri 2, LLC filed its request to use the Traditional Licensing Process on January 31, 2012. FFP Missouri 2, LLC provided public notice of its request on January 17, January 20, and January 24, 2012. By letter dated March 27, 2012, the Acting Director of the Division of Hydropower Licensing approved FFP Missouri 2, LLC's request to use the Traditional Licensing Process.

k. *With this notice, we are initiating informal consultation with:* (1) The U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (2) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR section 600.920; and (3) the Mississippi State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FFP Missouri 2, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. FFP Missouri 2, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8153 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13701–001]

FFP Missouri 2, LLC; Notice of Intent to File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13701–001.

c. *Date Filed:* January 31, 2012.

d. *Submitted By:* FFP Missouri 2, LLC.

e. *Name of Project:* Sardis Lake Hydroelectric Project.

f. *Location:* On the Little Tallahatchie River in Panola County, Mississippi. The proposed project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ramya Swaminathan, FFP Missouri 2, LLC, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822; or email at *rswaminathan@free-flow-power.com.*

i. *FERC Contact:* Patti Leppert at (202) 502–6034; or email at *patricia.leppert@ferc.gov.*

j. FFP Missouri 2, LLC filed its request to use the Traditional Licensing Process on January 31, 2012. FFP Missouri 2, LLC provided public notice of its request on January 17, January 20, and January 24, 2012. By letter dated March 27, 2012, the Acting Director of the Division of Hydropower Licensing approved FFP Missouri 2, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (1) The U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (2) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (3) the Mississippi State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FFP Missouri 2, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305

of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. FFP Missouri 2, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov*, or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8152 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13704–001]

FFP Missouri 2, LLC; Notice of Intent to File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 13704–001.

c. *Date Filed:* January 31, 2012.

d. *Submitted By:* FFP Missouri 2, LLC.

e. *Name of Project:* Arkabutla Lake Hydroelectric Project.

f. *Location:* On the Coldwater River in Tate and DeSoto Counties, Mississippi. The proposed project would occupy United States lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Ramya Swaminathan, FFP Missouri 2, LLC, 239 Causeway Street, Suite 300, Boston, MA 02114; (978) 283–2822; or email at *rswaminathan@free-flow-power.com.*

i. *FERC Contact:* Patti Leppert at (202) 502–6034; or email at *patricia.leppert@ferc.gov.*

j. FFP Missouri 2, LLC filed its request to use the Traditional Licensing Process on January 31, 2012. FFP Missouri 2, LLC provided public notice of its request on January 17, January 20, and January 24, 2012. By letter dated March 27, 2012, the Acting Director of the Division of Hydropower Licensing approved FFP Missouri 2, LLC's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (1) The U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service (NMFS) under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; (2) NMFS under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920; and (3) the Mississippi State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating FFP Missouri 2, LLC as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act, section 305 of the Magnuson-Stevens Fishery Conservation and Management Act, and section 106 of the National Historic Preservation Act.

m. FFP Missouri 2, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCONlineSupport@ferc.gov,* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8151 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12790–001]

Pomperaug Hydro Project; Andrew Peklo III; Notice Extending Deadline for Comments

On January 18, 2012, Office of Energy Projects staff held a technical meeting in Woodbury, CT. The meeting was transcribed by a court reporter; however, due to various processing delays, the transcript was not added to the public record for the Pomperaug Hydro Project (FERC No. 12790) until March 21, 2012. Because the transcript for the technical meeting was not available to the public until after the expiration of the comment period established in the Commission's January 12, 2012, notice, the deadline for filing comments is extended to April 13, 2012.

Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

If you have questions, please contact Steve Kartalia at (202) 502–6131, or via email at *stephen.kartalia@ferc.gov.*

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8155 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1881–066]

PPL Holtwood, LLC; Notice of Applications for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric applications have been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to change project boundary.

b. *Project No.:* 1881–066.

c. *Date Filed:* March 15, 2012 and March 19, 2012.

d. *Applicant:* PPL Holtwood, LLC.

e. *Name of Project:* Holtwood Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Dennis J. Murphy, Vice President & Chief Operating Officer, PPL Holtwood, LLC, Two North Ninth Street, Allentown, Pennsylvania 18101; telephone (610) 774–4316.

i. *FERC Contact:* Hillary Berlin: (202) 502–8915; *Hillary.Berlin@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* April 30, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please include the project number (P–1881–066) on any comments, motions, or recommendations filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Applications:* The licensee is requesting approval of the following changes to the project boundary in the March 15 application: (1) Removal of 1.22 acres of land to convey to a private individual in exchange for 0.5 acres adjacent to the Pequea Creek boat launch that would be added to the project boundary and used to provide additional parking for the boat launch; (2) removal of a 33.8-acre parcel on which the Indian Steps Museum and Ulmer-Root-Haines Memorial Park and nature trail are located and convey land to the Conservation Society of York County, who currently owns the museum building; and (3) the addition of approximately 61 acres of land owned by the licensee to be used for the new powerhouse and other project purposes associated with the capacity-related amendment approved on October 30, 2009. In the March 19, 2012 application, PPL Holtwood, LLC requests removal of 11 parcels totaling approximately 1,260 acres of land from the project boundary in order to convey that land to the Lancaster County Conservancy for long-term preservation and public use in accordance with the Pennsylvania Department of Natural Resources Lower Susquehanna Conservation Landscape Initiative.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) Bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8159 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2744–041; 2744–042]

N.E.W. Hydro LLC; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No.:* 2744–041 & 042.

c. *Date Filed:* March 14, 2012.

d. *Applicant:* N.E.W. Hydro LLC.

e. *Name of Project:* Menominee/Park Mill Hydro Project.

f. *Location:* The project is located on the Menominee River in Marinette County, Wisconsin and Menominee County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Scott Klabunde, P.O. Box 167, 116 N. State Street, Neshkoro, WI 54869–0167, (920) 293–4628, Ext. 14.

i. *FERC Contact:* John K. Novak, (202) 502–6076, *john.novak@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* April 30, 2012.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* N.E.W. Hydro LLC seeks approval to construct an angled fish guidance rack with bypass to guide downstream migrating fish around the powerhouse and dam at the Park Mill development, described as Phase 1 of the four phases of the Menominee/Park Mill Fish Passage and Protection Plan (Plan). N.E.W. Hydro LLC is also requesting approval to construct a fish lift with sorting/holding facilities to provide upstream passage at the Menominee development, described as Phase 2 of the Plan. The lake sturgeon is the primary target species for upstream and downstream passage around both dams. All construction activities associated with Phases 1 and 2 will take place within the project boundary and will not require additional lands. Phases 3 and 4 of the plan are not proposed at this time but will instead be the subject of future amendment applications.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2744–041 & 042) excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Any filings must bear in all capital letters the title ''COMMENTS,'' ''PROTEST,'' or ''MOTION TO INTERVENE,'' as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: March 29, 2012.

Kimberly D. Bose,

Secretary.

[FR Doc. 2012–8160 Filed 4–4–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2012–0187; FRL–9656–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; General Hazardous Waste Facility Standards

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to the Office of Management and Budget (OMB) to renew an existing approved Information Collection Request (ICR) concerning standards for facilities that handle hazardous waste. This ICR is scheduled to expire on August 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 4, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2012–0187, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave. NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2012–0187. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The *www.regulations.gov* Web site is an ''anonymous access'' system,

which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Norma Abdul-Malik, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 703–308–8753; fax number: 703–308–8617; email address: *abdul-malik.norma@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2012–0187, which is available for online viewing at *www.regulations.gov,* or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are business and other for-profit, as well as State, Local, and Tribal governments.

Title: General Hazardous Waste Facility Standards.

ICR numbers: EPA ICR No. 1571.10, OMB Control No. 2050–0120.

ICR status: This ICR is currently scheduled to expire on August 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the U.S. Environmental Protection Agency (EPA) develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs) as may be necessary to protect human health and the environment. Subsections 3004(a)(1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

- Maintaining records of all hazardous wastes identified or listed under subtitle C that are treated, stored, or disposed of, and the manner in which such wastes were treated, stored, or disposed of;
- Operating methods, techniques, and practices for treatment, storage, or disposal of hazardous waste;
- Location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;
- Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and
- Maintaining or operating such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

The regulations implementing these requirements are codified in 40 CFR parts 264 and 265. The collection of this information enables EPA to properly determine whether owners/operators or hazardous waste treatment, storage, and disposal facilities meet the requirements of Section 3004(a) of RCRA.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 324 hours per respondent, and the annual public recordkeeping burden for this collection of information is estimated to average 88 hours per respondent. Burden means the total time, effort, or

financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 1403.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 578,381 hours.

Estimated total annual costs: $38,057,653 including $37,384,641 annualized labor costs and $673,012 annualized capital or O&M costs.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: March 28, 2012.

Suzanne Rudzinski,

Director, Office of Resource Conservation and Recovery.

[FR Doc. 2012–8201 Filed 4–4–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R10–OAR–2012–0211; FRL–9655–5]

Air Pollution Control: Proposed Action on Clean Air Act Grants to the Idaho Department of Environmental Quality; Proposed Determination With Request for Comments; and a Notice of Opportunity for a Public Hearing

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice; Proposed determination with request for comments; and a notice of opportunity for a public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that reduction in expenditures of non-Federal funds for the Idaho Department of Environmental Quality (IDEQ) in support of its continuing air program under Clean Air Act (CAA) Section 105 for the period of calendar year 2010 was not selective relative to the expenditures of all other executive branch agencies in the State for the same period. This determination, when final, will reset IDEQ's required recipient maintenance of effort level for 2010 and 2011, retain its federal award for the 2010 and 2011 grant years, and allow IDEQ to remain eligible for a § 105 grant for 2012 and beyond.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by May 7, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0211, by one of the following methods:

- *http://www.regulations.gov*, Follow the online instructions for submitting comments.
- *Email: McGown.Michael@epa.gov*
- *Mail:* Michael McGown, U.S. Environmental Protection Agency, Region 10, 1435 North Orchard, Boise, ID 83706.

FOR FURTHER INFORMATION CONTACT: Michael McGown, Region 10, Idaho Operations Office, 1435 North Orchard, Boise, ID 83706, phone: (208)–378–5764, fax: (208)–378–5744, or email address at *mcgown.michael@epa.gov*.

SUPPLEMENTARY INFORMATION: Section 105 of the Clean Air Act (CAA) provides grant support for the continuing air programs of eligible state, local and tribal agencies. Section 105 contains two cost-sharing provisions to initially qualify for a § 105 grant under § 105(a)(1)(A). An eligible entity must meet a minimum match and to remain eligible for Section 105 grant funds, an eligible entity must continue to meet the match as well as meet a maintenance of effort (MOE) requirement under § 105(c)(1). The match requires that at least 2/5 of the total costs for approved § 105 program activities must be paid by the state/local recipient. Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses.

The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year but only for the costs of recurring activities. Specifically, § 105(c)(1) [42 U.S.C. 7405(c)(1)], provides that ''no agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. Pursuant to CAA § 105(c)(2), however, EPA may still award a grant to an agency not meeting the requirements of § 105(c)(1), ''if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.'' These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.140 through 35.148.

EPA issued additional guidance to recipients on what constitutes a nonselective reduction on September 30, 2011. In consideration of legislative history, the guidance clarified that a non-selective reduction does not necessarily mean that each Executive branch agency need be reduced in equal proportion. However, it must be clear to EPA, from the weight of evidence, that a recipient's CAA-related air program is not being disproportionately impacted or singled out for a reduction.

A § 105 recipient must submit a final financial status report no later than 90 days from the close of its grant period that documents all of its federal and non-federal expenditures for the completed period. The recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary to enable EPA to make a determination that a non-selective reduction has occurred. In order to expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction's executive branch agencies, the recipient agency itself, and the agency's air program. The recipient should identify any executive branch agencies or programs that should be excepted from

comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in two key areas will be needed: Budget data specific to the recipient's air program and comparative budget data between the recipient's air program, the agency containing the air program and the other executive branch agencies. EPA may also request information from the recipient about how impacts on the its program operations will affect its ability to meet its CAA obligations and requirements.

In the case of IDEQ, EPA provides annual grant funding under the authority CAA § 105 to help IDEQ support the operation of its CAA-related continuing air pollution control program. IDEQ's § 105 annual grant period is based on the calendar year and as such is always impacted by two State budget years since the annual Idaho state budget cycle runs from July 1 of the current through June 30 of the following year. For the 2010 grant year EPA awarded the IDEQ $1,497,516 in § 105 funds. This represented 27.8% of the total approved program funding based on IDEQ's stated prospective contribution of $3,891,016 in its own non-federal funds to cover the costs of both non-recurring and recurring activities. The State's portion of the total recurring costs was to have been at least $3,842,589. This was the State's final level of recurrent expenditures for the 2009 grant year and constituted the required MOE level for the 2010 grant year.

However, on March 8, 2011, IDEQ informed EPA in writing that due to continued reductions in the State's overall budget for executive branch agencies, particularly in the State's SFY2011 budget (which funded the last 6 months of the calendar year 2010 grant), IDEQ would fall short of its required MOE level by $452,789. The resulting contribution of $3,389,800 would be 11.78% below the required level. EPA examined the IDEQ's request and confirmed that its 2010 final financial status report indicated a State contribution level of $3,389,800 of recurrent expenditures.

In its March 8, 2011 letter to EPA, IDEQ requested an adjustment of its 2010 MOE level based upon a non-selective reduction. IDEQ also sought to retain its 2011 § 105 award based on this lowered recipient contribution level. In support of its request IDEQ provided legislative appropriations information on State general fund levels by major departmental categories for the 2009, 2010 and 2011 budget years. In June, July and October of 2011, EPA requested additional clarifying information from IDEQ on the full range of state-only executive branch, IDEQ and air program appropriations and expenses for the 2010 grant period. IDEQ supplied additional information to EPA on July 21, July 25, October 17, October 27, and November 15th that further distinguished general fund, dedicated fund and federal stimulus resources. On November 28 and November 30, 2011 IDEQ further clarified its direct and indirect air program expenditures compared to changes in overall IDEQ environmental program expenditure levels, overall State general fund levels and overall State appropriations levels for the affected period. A summary of this information is shown in the tables below.

TABLE 1—IDEQ GENERAL FUND CHANGES FROM SFY 2009 THROUGH SFY 2010

[Final amounts in $s]

IDEQ budget unit	2009	2010	Difference	% Change
Administration (Recurring Appropriation)*	3,115,800	2,823,700	−292,000	−9.37
Administration (One Time Appropriation)*	47,700	0	−47,700	−100.00
Air Program (Recurring Appropriation)	3,075,700	2,769,200	−306,500	−9.97
Air Program (One Time Appropriation)	1,023,700	32,000	−991,700	−96.87
Water Program (Recurring Appropriation)	7,847,700	6,012,700	−1,835000	−23.38
Water Program (One Time Appropriation)	36,000	120,000	84,000	233.33
Waste Program (Recurring Appropriation)	2,769,200	2,450,500	−318,700	−11.51
Waste Program (One Time Appropriation)	0	0	0	n/a
INL Oversight Program	164,500	103,400	−61,100	−37.14
Coeur D'Alene Basin Commission	98,400	104,300	5,900	6.00
Total: Recurring Appropriation	17.071,300	14,263,800	−2,807,500	−16.45
Total: One Time Appropriation	1,107,400	152,000	−955,400	−86.27
Total: IDEQ	18,178,700	14,415,800	−3,762,900	−20.70

Notes: Table reflects comparison of general funds only. Dedicated state funds (e.g., non-Title V permit fees) are not included. Administration costs also need to be attributed to the various other program units. Addition of these funds would bring state recurring air totals for 2009 and 2010 to $3,842,589 and $3,389,800, respectively. Federal funds including ARRA funds are not included.

Table 1 compares overall IDEQ general funds expenses for years 2009 and 2010. While this table only shows general fund dollars, the inclusion of other dedicated funds by program unit shows similar results. As noted earlier, maintenance of effort is based solely on recurring program expenditures. The decline in recurring air program costs of just under 10% is less than the overall IDEQ budget decline of about 16.5% as well as the other individual program units of administration, water and waste. Only the smaller Coeur D'Alene Basin Commission showed any increase. Based on this information, a comparison of air program funding levels to other IDEQ programs shows that the air program was not singled out for a disproportionate or selective reduction. Table 2 compares both IDEQ and IDEQ Air program funding levels to the balance of other state agencies and programs. With only a few exceptions, the change in the IDEQ air program general funding level is consistent with changes in the budgets other state agencies and programs from 2009 to 2010. Comparison with all state agencies' aggregate budgets—totals that also include dedicated sources of funds, i.e., inclusion of revenue streams or sources that may not be subject to direct executive branch control—shows a more variable picture. EPA considered the relative size of the agencies and their budgets, their mission (e.g., public safety, health, education) and their sources of funding. Based upon these considerations, EPA concluded that neither the air program nor IDEQ overall was singled out for a disproportionate or selective reduction when compared to all the other executive agencies from 2009 to 2010.

Accordingly, consistent with criteria set forth in CAA § 105(c)(2) and consistent with the Agency's September 30, 2011 Guidance on qualifying for a non-selective reduction, EPA has determined that it is appropriate to approve IDEQ's request for a non selective reduction in its level of recurring expenditures for the 2010 grant year for its air program grant. The revised MOE level for 2010 and 2011 grant years is $3,389,800.

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Table 2. Weight of Evidence Analysis

(Federal Funds including ARRA resources, are not included wherever possible.)

Idaho State Government *	2009 Actuals General Funds	2009 Actuals Dedicated Funds	2009 Actuals Total	2010 Actuals General Funds	2010 Actuals Dedicated Funds	2010 Actuals Total	Total Actuals % Change: '09 to '10	GF-Only Actuals % Change: '09 to '10
Executive Branch Agencies (GF Average w/o IDEQ Air)	2,749,425,400	1,121,068,800	3,870,494,200	2,363,815,600	1,119,477,400	3,483,293,000	-10.00%	**-14.03%**
IDEQ Air Program Grant Year (State Recurring Funds Only)	3,695,402	147,187	3,842,589	3,242,613	147,187	3,389,800	-11.78%	-12.25%
IDEQ (including IDEQ Air) **	18,026,700	5,309,700	23,336,400	14,263,800	8,680,100	22,943,900	-1.68%	-20.87%
Department of Fish and Game	0	40,840,400	40,840,400	0	39,919,800	39,919,800	-2.25%	n/a
Board of Land Commissioners **	5,085,500	27,619,500	32,705,000	4,079,200	36,241,300	40,320,500	23.29%	-19.79%
Department of Parks and Recreation	15,995,600	23,026,000	39,021,600	6,311,700	22,460,000	28,771,700	-26.27%	-60.54%
Department of Water Resources	13,330,800	2,813,200	16,144,000	11,295,500	3,967,200	15,262,700	-5.46%	-15.27%
Total Natural Resources	52,438,600	99,608,800	152,047,400	35,950,200	111,268,400	147,218,600	-3.18%	-31.44%
Public School Support **	1,333,445,100	148,442,600	1,481,887,700	1,148,614,700	148,901,300	1,297,516,000	-12.44%	-13.86%
State Board of Education **	417,719,500	164,603,000	582,322,500	355,536,900	168,111,600	523,648,500	-10.08%	-14.89%
Other Education	14,998,000	1,461,300	16,459,300	0	0	0	-100.00%	-100.00%
Total Education	1,766,162,600	314,506,900	2,080,669,500	1,504,151,600	317,012,900	1,821,164,500	-12.47%	**-14.84%**
Medically Indigent (09)/ Catastrophic (10) Health Care	23,267,700	0	23,267,700	33,771,700	0	33,771,700	45.14%	45.14%
Department of Health and Welfare	496,283,000	138,532,000	634,815,000	428,775,400	152,889,300	581,664,700	-8.37%	-13.60%
Public Health Districts	10,073,400	492,100	10,565,500	8,601,600	266,600	8,868,200	-16.06%	-14.61%
State Independent Living Council	120,900	129,800	250,700	103,900	258,800	362,700	44.67%	-14.06%
Total Health and Human Services	529,745,000	139,153,900	668,898,900	471,252,600	153,414,700	624,667,300	-6.61%	**-11.04%**
Department of Correction	162,046,300	13,298,500	175,344,800	145,855,500	17,222,300	163,077,800	-7.00%	-9.99%
Judicial Branch	29,828,700	8,390,500	38,219,200	28,570,400	6,927,000	35,497,400	-7.12%	-4.22%
Department of Juvenile Corrections	37,018,800	6,759,400	43,778,200	32,182,900	6,926,900	39,109,800	-10.66%	-13.06%
Idaho State Police **	22,688,300	29,631,200	52,319,500	16,453,500	28,842,400	45,295,900	-13.42%	-27.48%
Total Public Safety	251,582,100	58,079,600	309,661,700	223,062,300	59,918,600	282,980,900	-8.62%	**-11.34%**
Department of Agriculture	16,498,500	14,592,100	31,090,600	11,531,100	15,740,600	27,271,700	-12.28%	-30.11%
Department of Commerce	8,220,800	8,534,200	16,755,000	4,231,900	7,099,100	11,331,000	-32.37%	-48.52%
Department of Finance	0	5,225,400	5,225,400	0	5,259,400	5,259,400	0.65%	n/a
Industrial Commission	13,963,100	616,500	14,579,600	12,294,300	687,700	12,982,000	-10.96%	-11.95%
Department of Insurance	6,554,500	433,100	6,987,600	6,049,600	422,000	6,471,600	-7.38%	-7.70%
Department of Labor	703,700	578,300	1,282,000	311,100	416,800	727,900	-43.22%	-55.79%
Public Utilities Commission	4,628,700	59,300	4,688,000	4,471,800	60,200	4,532,000	-3.33%	-3.39%
Self-Governing Agencies	3,671,600	43,034,700	46,706,300	8,402,500	44,878,800	53,281,300	14.08%	128.85%
Department of Transportation ***	0	247,642,300	247,642,300	0	228,005,900	228,005,900	-7.93%	n/a
Total Economic Development	54,240,900	320,715,900	374,956,800	47,292,300	302,570,500	349,862,800	-6.69%	**-12.81%**
Department of Administration **	7,920,400	142,592,600	150,513,000	6,828,800	101,308,400	108,137,200	-28.15%	-13.78%
Attorney General	18,207,000	205,100	18,412,100	15,761,300	777,100	16,538,400	-10.18%	-13.43%
State Controller	7,292,000	7,367,700	14,659,700	6,054,100	7,152,800	13,206,900	-9.91%	-16.98%
Office of the Governor **	18,583,500	28,243,700	46,827,200	14,959,000	52,718,400	67,677,400	44.53%	-19.50%
Legislative Branch	12,556,400	1,556,500	14,112,900	10,679,300	1,757,300	12,436,600	-11.88%	-14.95%
Lieutenant Governor	115,300	0	115,300	133,100	0	133,100	15.44%	15.44%
Department of Revenue and Taxation	26,838,600	6,705,400	33,544,000	24,440,500	8,352,500	32,793,000	-2.24%	-8.94%
Secretary of State	2,166,400	0	2,166,400	1,860,000	1,500,000	3,360,000	55.10%	-14.14%
State Treasurer	1,576,600	2,332,700	3,909,300	1,390,500	1,725,800	3,116,300	-20.28%	-11.80%
Total General Government	95,256,200	189,003,700	284,259,900	82,106,600	175,292,300	257,398,900	-9.45%	**-13.80%**

* Sources: FY 2011 and FY 2012 Idaho Legislative Budget Books; correspondence from IDEQ to EPA.

** Selected agencies including IDEQ, had federal ARRA funds included in their 2010 Budget Book 2010 budget line item totals. A few agencies had ARRA funds in their 2009 budgets. These one time , federal ARRA funds should not be included when assessing the MOE which is based on state-only recurring costs.

*** In addition to federal funds, Idaho's transportation budget includes money from registration fees and gas taxes but does not receive general fund support.

Note: Increases in funds for self-governing agencies supported medical boards, state lottery operations, building safety, etc. Dedicated increases for the Governors's office largely attributable to increases in health, welfare and public safety programs.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by May 7, 2012 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by May 7, 2012. If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Michael McGown at the above address.

Dated: March 22, 2012.

Michelle L. Pirzadeh,

Deputy Regional Administrator, Region 10.

[FR Doc. 2012–8200 Filed 4–4–12; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3502–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 7, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget (OMB), via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Judith B. Herman, Federal Communications Commission, via the Internet at *Judith-b.herman@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, FCC, at 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1147.

Title: Wireless E911 Phase II Location Accuracy Requirements, Third Report and Order, FCC 11–107.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals and households; business or other for-profit entities; Not-for-profit institutions and State, Local, or Tribal Government.

Number of Respondents: 4,898 respondents; 9,514 responses.

Estimated Time per Response: 5.5867143 hours (average).

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151, 154 and 332 of the Communications Act of 1934, as amended.

Total Annual Burden: 53,152 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission obtained OMB approval for this new collection in March 2011. The Commission is now seeking OMB approval for another revision to this information collection. The Commission will submit this information collection to the OMB after publication of this 30 day notice.

The Commission adopted and released a Third Report and Order, FCC 11–107, PS Docket No. 07–114, which provides that new Commercial Mobile Radio Service (CMRS) providers, meeting the definition of covered CMRS providers in Section 20.18 and deploying networks subsequent to the effective date of the Third Report and Order that are not an expansion or upgrade of an existing CMRS network, must meet the handset-based location accuracy standard from the start. Consequently, the rule requires new CMRS providers launching new stand-alone networks during the eight-year implementation period for handset-based CMRS wireless licensees to meet the applicable handset-based location accuracy standard in effect of the time of deployment. Therefore, new rule section 20.18(h)(2)(iv) specifies that new CMRS providers must comply with paragraphs (h)(2)((i–iii) of Section 20.18, which are the location accuracy requirements for handset-based carriers. OMB approved the information collection for those rule paragraphs, which the Second Report and Order adopted, on March 30, 2011, under OMB Control No. 3060–1147. The Commission announced OMB's approval and the effective date in 76 FR 23713 of the **Federal Register**.

As a result, under the new rule section adopted by Third Report and Order, all new CMRS providers, in delivering emergency calls for Enhanced 911 service, must satisfy the handset-based location accuracy standard at either a county-based or Public Safety Answering Point (PSAP)-based geographic level. Similarly, in accordance with the new rule and under the paragraph provision of Section 20.18(h)(2)(ii), new CMRS providers may exclude up to 15 percent of the counties or PSAP areas they serve due to heavy forestation that limits handset-based technology accuracy in those counties or areas.

Therefore, new CMRS providers will be required to file a list of the specific counties where they are utilizing their respective exclusions. In its September 2010 Second Report and Order, 75 FR 70604, the Commission found that permitting this exclusion properly but narrowly accounts for the known technical limitations of handset-based location accuracy technologies, while ensuring that the public safety community and the public at large are sufficiently informed of these limitations.

When they have begun deploying their new networks, the new CMRS providers must submit initial reports, as the Commission will announce after OMB approval of this revised information collection, with a list of the

areas that they are permitted to exclude from the handset-based location accuracy requirements. Accordingly, the Commission will specify the procedures for electronic filing into PS Docket No. 07–114, consistent with the current OMB approved information collection for handset-based carriers, and new CMRS providers must send copies of the exclusion reports to the National Emergency Number Association, the Association of Public-Safety Communications Officials-International, and the National Association of State 9–1–1 Administrators.

Further, the rules adopted by the Commission's September 2010 Second Report and Order, 75 FR 70604, also require that, two years after January 18, 2011, wireless carriers provide confidence and uncertainty data on a per call basis to PSAPs. Because the new rule adopted by the Third Report and Order considers new CMRS providers as providers covered under the definition of CMR providers pursuant to section 20.18 of the Commission's rules, new CMRS providers will also be subject to the information collection requirement to provide this confidence and uncertainty data.

Additionally, in view of the amended location accuracy requirements and the timeframes and benchmarks for handset-based wireless carriers to comply with them, in its September 2010 Second Report and Order, 75 FR 70604, the Commission recognized that the waiver process is suitable to address individual or unique problems, where the Commission can analyze the particular circumstances and the potential impact to public safety. Thus, similarly, the supporting statement for this information collection revision recognizes that new CMRS providers might file waiver requests and, therefore, be subject to a collection and reporting requirement.

The Third Report and Order found that requiring all new CMRS network providers to comply with the Commission's handset-based location accuracy standard is consistent with the regulatory principle of ensuring technological neutrality. Providers deploying new CMRS networks are free to use network-based location techniques, or to combine network and handset-based techniques, to provide 911 location information, provided that they meet the accuracy criteria applicable to handset-based providers. Given the long-term goal of universal support for one location accuracy standard, the Commission believed that such a mandate allows appropriate planning and ensures that new technology will comply with the most stringent location accuracy standard that applies to existing technology.

Section 47 CFR 20.18(h)(2)(iv) requires that providers of new CMRS networks that meet the definition of covered CMRS providers under paragraph (a) of this section must comply with the requirements of paragraphs (h)(2)(i)-(iii) of this section. For this purpose, a ''new CMRS network'' is a CMRS network that is newly deployed subsequent to the effective date of the Third Report and Order in PS Docket No. 07–114 and that is not an expansion or upgrade of an existing CMRS network.

The information provided by wireless carriers deploying new CMRS networks to report the counties or PSAP service areas where the carriers cannot provide E911 location accuracy at either the county or the PSAP level will furnish the Commission, affected PSAPs, state and local emergency agencies, public safety organizations and other interested stakeholders the supplementary data necessary for public safety awareness of those areas where it is most difficult to measure location accuracy during the benchmark periods for handset-based wireless carriers.

The provision of confidence and uncertainty data to PSAPs by the new CMRS providers and the SSPs responsible for transporting that data between them and PSAPs will enhance the PSAPs' ability to efficiently direct first responders to the correct location of emergencies to achieve the emergency response goals of the nation in responding expeditiously to emergency crisis situations and in ensuring homeland security.

OMB Control Number: 3060–0400.

Title: Part 61, Tariff Review Plan (TRP).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 2,840 respondents; 8,554 responses.

Estimated Time per Response: .5 hours to 53 hours.

Frequency of Response: On occasion, annual, biennial, and one time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 201, 202, 203, and 251(b)(5) of the Communications Act of 1934, as amended.

Total Annual Burden: 121,656 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this revised information collection to the Office of Management and Budget (OMB) during this 30 day comment period to obtain the full three year approval from them. The hourly burden has increased by 117,056 hours which is due to an Order that was adopted and released requiring or permitting incumbent and competitive local exchange carriers, as part of transitioning regulation of interstate and intrastate switched access rates and reciprocal compensation rates to bill-and-keep under section 251(b)(5), to file tariffs with state commissions and the FCC. This transition affects different switched access rates at specified timeframes and establishes an Access Recovery Charge by which carriers will be able to assess end users a monthly charge to recover some or all of the revenues they are permitted to recover resulting from reductions in intercarrier compensation rates. Price cap LECs must remove the rate elements in the traffic-sensitive and trunking baskets from price cap regulation on July 1, 2012. There interstate tariff filings will require cost support that generally is encompassed in the existing support burdens and, in many cases, may be satisfied through the data collection encompassed by a new information collection entitled *''Intercarrier Compensation and Universal Service Compliance and Monitoring''* which will also be submitted to the OMB for approval and assigned an OMB control number (see description of new information collection below). The intrastate tariff filings may, depending on state requirements, require supporting materials to be filed that may also largely be satisfied by submitting the new information collection referenced above.

As of November 2010, there are 92 total incumbent LECs that file interstate tariffs. Of them, there are 39 ILECs that file pursuant to price cap regulation under Sections 61.41–61.49 of the Commission's rules. Outside of the National Exchange Carrier Association (NECA), there are 12 ILECs filing their own tariffs pursuant to rate-of-return regulation under Section 61.38 of the Commission's rules. The remaining 40 ILECs file their own tariffs pursuant to

section 61.39 of the Commission's rules. NECA files one Tariff Review Plan for approximately 1,000 Sections 61.38 and 61.39 ILECs. Therefore, we estimate 51 + 40 +1 (NECA) = 92 filing entities.

We also estimate that 330 competitive and incumbent LECs will have to make a one-time interstate tariff filing to permit them to assess access charges on Voice over Internet Protocol (VoIP) calls. We estimate that 2,840 competitive and incumbent LECs will have to file intrastate tariffs annually which may require supporting materials to be filed. We also estimate that 2,840 competitive and incumbent LECs will have to make a one-time intrastate tariff filing to establish VoIP rates at interstate rate levels that may require supporting materials to be filed. Finally, we estimate that 1,340 incumbent LECs annually will certify, as part of their tariff filings to the Commission and to the relevant state commission, that they are not seeking duplicative recovery in the state jurisdiction for an Eligible Recovery subject to the recovery mechanism.

For those services still requiring cost support, TRPs assist the Commission in determining whether ILEC access charges are just and reasonable as required under the Communications Act of 1934, as amended.

OMB Control Number: 3060–0298.

Title: Part 61, Tariffs (Other than the Tariff Review Plan).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,210 respondents; 7,350 responses.

Estimated Time per Response: 20 hours to 50 hours.

Frequency of Response: On occasion, annual, biennial and one time reporting requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 151–155, 201–205, 208, 251–271, 403, 502 and 503 of the Communications Act of 1934, as amended.

Total Annual Burden: 215,500 hours.

Total Annual Cost: $1,410,150.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: Respondents are not being asked to submit confidential information to the Commission. If the Commission requests respondents to submit information which respondents believe are confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission is seeking OMB approval for this revised collection. The Commission will submit this information collection to the OMB after publication of this 30 day notice.

On November 18, 2011, the Commission adopted the *USF/ICC Transformation Order,* FCC 11–161, that requires or permits incumbent and competitive local exchange carriers as part of transitioning regulation of interstate and intrastate switched access rates and reciprocal compensation rates to bill-and-keep under section 251(b)(5) of the Communications Act of 1934, as amended, to file tariffs with state commissions and the FCC. This transition affects different switched access rates at specified timeframes and establishes an Access Recovery Charge by which carriers will be able to assess end uses a monthly charge to recover some or all of the revenues they are permitted to recover resulting from reductions in intercarrier compensation rates. We estimate that 40 rate-of-return LECs will need to make an additional interstate access tariff filing annually and that 330 competitive and incumbent LECs will have to make a one-time filing to allow them to assess charges for Voice over Internet Protocol (VoIP). We also estimate that an additional 2,840 competitive and incumbent LECs will have to file intrastate tariffs annually. Finally, we estimate that 2,840 competitive and incumbent LECs will have to make a one-time intrastate tariff filing to establish VoIP rates of interstate rate levels.

The information collected through a carrier's tariff is used by the Commission and state commissions to determine whether services offered are just and reasonable as the Act requires. The tariffs and any supporting documentation are examined in order to determine if the services are offered in a just and reasonable manner.

OMB Control Number: 3060–1122.

Title: Preparation of Annual Reports to Congress for the Collection and Expenditures of Fees or Charges for Enhanced 911 (E911) Services Under the NET 911 Improvement Act of 2008.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: State, local or tribal governments.

Number of Respondents: 56 respondents; 56 responses.

Estimated Time per Response: 50 hours.

Frequency of Response: Annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in 47 U.S.C. Sections 201(b), 219(b) and 220 of the Communications Act of 1934, as amended.

Total Annual Burden: 2,800 hours.

Total Annual Cost: N/A.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There are no assurances of confidentiality provided to respondents. The Commission's rules address the issue of confidentiality at 47 CFR 0.457, 0.459 and 0.461. These rules address access to records that are not routinely available to the public, requests and requirements that materials submitted to the Commission be withheld from public inspection, and requests for inspection of materials not routinely available for public inspection.

Needs and Uses: The Commission is seeking OMB approval for this revised information collection in order to obtain the full three year clearance from them. There is no change in the Commission's previous burden estimates. The Commission will submit this information collection to the OMB after publication of this 30 day notice.

The Commission proposes to ask the following information:

1. A statement as to whether or not your State, or any political subdivision, Indian tribe, village or regional corporation therein as defined by Section 6(f)(1) of the NET 911 Act, has established a funding mechanism designated for or imposed for the purposes of 911 or E911 support or implementation (including a citation to the legal authority for such mechanism).

2. The amount of the fees or charges imposed for the implementation and support of 911 or E911 services and the total amount collected pursuant to the assessed fees or charges, for the annual period ending December 31, 20XX.

3. A statement describing how the funds collected are made available to localities, and whether your state has established written criteria regarding the allowable uses of the collected funds, including the legal citation to such criteria.

4. A statement identifying any entity in your State that has the authority to approve the expenditure of funds collected for 911 or E911 purposes; a description of any oversight procedures established to determine that collected funds have been made available or used for the purposes designated by the funding mechanism or otherwise used to implement or support 911; and a statement describing enforcement or other corrective actions undertaken in connection with such oversight, for the annual period ending December 31, 20XX.

5. A statement whether all the funds collected for 911 or E911 purposes have been made available or used for the purposes designated by the funding mechanism, or otherwise used for the implementation or support of 911 or E911.

6. A statement identifying what amount of funds collected for 911 or E911 purposes were made available or used for any purposes other than the ones designated by the funding mechanism or used for purposes otherwise unrelated to 911 or E911 implementation or support, including a statement identifying the unrelated purposes for which the funds collected for 911 or E911 purposes were made available or used.

7. A statement identifying which specificity all activities, programs, and organizations for whose benefit your State, or political subdivision thereof, has obligated or expended funds collected for 911 or E911 purposes and how these activities, programs, and organizations support 911 or E911 services or enhancements of such services.

8. A statement regarding whether your State classifies expenditures on Next Generation 911 as within the scope of permissible expenditures of funds for 911 or E911 purposes, whether your State has expended such funds on Next Generation 911 programs, and if so, how much your State has expended in the annual period ending December 31, 20XX on Next Generation 911 programs.

9. Any other comments you may wish to provide regarding the applicable funding mechanism for 911 or E911.

The purpose of this information collection is to meet the Commission's ongoing statutory obligations under the New and Emerging Technologies 911 Improvement Act of 2008, Public Law 110–283, 122 Stat. 2620 (2008) (NET 911 Act), which requires the Commission to submit an annual report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives, ''detailing the status in each State of the collection and distribution of such fees or charges, and including findings on the amount of revenues obligated or expended by each State or political subdivision thereof for any purposes other than the purpose for which any such fees or charges are specified.''

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–8203 Filed 4–4–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted to the Office of Management and Budget for Review and Approval

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 7, 2012. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov*. To submit your PRA comments by email send them to: *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

OMB Control Number: 3060–0636.

Title: Sections 2.906, 2.909, 2.1071, 2.1075, 2.1076, 2.1077 and 15.37, Equipment Authorizations—Declaration of Conformity.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,000 respondents; 10,000 responses.

Estimated Time per Response: 9.5 hours (average).

Frequency of Response: One-time reporting requirement, recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i), 301, 302, 303(e), 303(r), 304 and 307.

Total Annual Burden: 95,000 hours.

Total Annual Cost: $17,500,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection to Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension, there is no change in the reporting, recordkeeping and/or third party disclosure requirements. There is no change in the estimated respondents/responses, burden hours and/or annual costs.

In 1996, the Declaration of Conformity (DoC) procedure was established in a Report and Order, FCC 96–208, *In the Matter of Amendment of Parts 2 and 15 of the Commission's Rules to Deregulate the Equipment Authorization Requirements for Digital Devices.*

(a) The Declaration of Conformity equipment authorization procedure, 47 CFR 2.1071, requires that a manufacturers or equipment supplier test a product to ensue compliance with technical standards that limit radio frequency emissions.

(b) Additionally, the manufacturer or supplier must also include a DoC (with the standards) in the literature furnished with the equipment, and the equipment

manufacturer or supplier must also make this statement of conformity and supporting technical data available to the FCC, at the Commission's request.

(c) The DoC procedure represents a simplified filing and reporting procedure for authorizing equipment for marketing.

(d) Finally, testing and documentation of compliance are needed to control potential interference to radio communications. The data gathering are necessary for investigating complaints of harmful interference or for verifying the manufacturer's compliance with the Commission's rules.

Federal Communications Commission.

Bulah P. Wheeler,

Deputy Manager, Office of the Secretary, Office of Managing Director.

[FR Doc. 2012–8204 Filed 4–4–12; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting Notice

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday April 10, 2012 at 10 a.m.

PLACE: 999 E Street NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Shelley E. Garr,

Deputy Secretary of the Commission.

[FR Doc. 2012–8359 Filed 4–3–12; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–05]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

ACTION: Notice of meeting.

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in open session for its regular meeting:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: April 11, 2012.

Time: 10:30 a.m.

Status: Open.

Matters To Be Considered

Summary Agenda

March 14, 2012 minutes—Open Session

(No substantive discussion of the above items is anticipated. These matters will be resolved with a single vote unless a member of the ASC requests that an item be moved to the discussion agenda.)

Discussion Agenda

Appraisal Foundation December 2011 grant reimbursement request.

Proposed revision of ASC Rules of Operation governing Vice Chairperson of the ASC.

Kansas Compliance Review.

How To Attend and Observe an ASC Meeting

Email your name, organization and contact information to *meetings@asc.gov.* You may also send a written request via U.S. Mail, fax or commercial carrier to the Executive Director of the ASC, 1401 H Street NW., Ste. 760, Washington, DC 20005. The fax number is 202–289–4101. Your request must be received no later than 4:30 p.m., ET, on the Monday prior to the meeting. Attendees must have a valid government-issued photo ID and must agree to submit to reasonable security measures. The meeting space is intended to accommodate public attendees. However, if the space will not accommodate all requests, the ASC may refuse attendance on that reasonable basis. The use of any video or audio tape recording device, photographing device, or any other electronic or mechanical device designed for similar purposes is prohibited at ASC meetings.

Dated: March 30, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–8127 Filed 4–4–12; 8:45 am]

BILLING CODE P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

[Docket No. AS12–06]

Appraisal Subcommittee Notice of Meeting

AGENCY: Appraisal Subcommittee of the Federal Financial Institutions Examination Council

ACTION: Notice of Meeting

Description: In accordance with Section 1104(b) of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended, notice is hereby given that the Appraisal Subcommittee (ASC) will meet in closed session:

Location: OCC—250 E Street SW., Room 8C, Washington, DC 20219.

Date: April 11, 2012.

Time: Immediately following the ASC open session.

Status: Closed.

Matters To Be Considered:

March 14, 2012 minutes—Closed Session.

Preliminary discussion of State Compliance Reviews.

Dated: March 30, 2012.

James R. Park,

Executive Director.

[FR Doc. 2012–8130 Filed 4–4–12; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

[Docket No. 12–01]

OC International Freight, Inc., OMJ International Freight, Inc. and Omar Collado; Order for Hearing on Appeal of Denial of License and Order of Investigation and Hearing; Possible Violations of Sections 10(A)(1) and 19 of the Shipping Act of 1984

I. Appeal of FMC Staff Determination to Deny OTI License

OC International Freight, Inc. (OC) submitted an application on December 2, 2010, for a license as an Ocean Transportation Intermediary (OTI) to operate as a Non-Vessel-Operating Common Carrier (NVOCC) and as an Ocean Freight Forwarder (FF). OC was incorporated on February 27, 2007 in the State of Florida, and OC is currently located at 4458 NW 74th Avenue, Miami, FL, 33166. Omar Collado is identified in the application as OC's Qualifying Individual, as well as its President, Secretary and sole owner.

On November 17, 2011, the Bureau of Certification and Licensing (BCL) issued a Notice of Intent to Deny OC's license

application in accordance with 46 CFR 515.15. As reflected in BCL's Notice of Intent, that action stemmed from the results of an investigation by the Commission's Miami Area Representative (AR) revealing that the applicant, the applicant's Qualifying Individual and a predecessor corporation, OMJ International Freight, Inc.,[1] may have violated sections 10(a)(1) and 19 of the Shipping Act, 46 U.S.C. 41102(a), 40901–40902. BCL's letter advised that, under 46 CFR 515.15, denial of an OTI license is appropriate when the Commission cannot rely upon the character or integrity of the applicant, or its principals, to the extent necessary to ensure future conduct within the requirements of the Shipping Act and the Commission's regulations. Based on the AR's investigation, BCL concluded that OC, and its qualifying individual, Mr. Collado, lacked the requisite character to be licensed as an OTI. OC timely requested a hearing on the denial of its license application under 46 CFR 515.15(c).

II. Investigation of Possible Violations of the Shipping Act

Central to the applicant's request for hearing here, Mr. Collado challenges whether he, OMJ and/or OC should be found to have violated the Shipping Act and the Commission's regulations. Specifically, the AR's investigation asserted that between October 2007 and October 2009, Mr. Collado and OMJ allowed its foreign-based unbonded OTI counterpart, Island Cargo Services, to utilize OMJ's service contracts in numerous instances. Although identified as the NVO on the underlying service contract with Seaboard Marine, the AR found that Mr. Collado did not issue an OMJ house bill of lading and never billed the cargo owner for ocean freight. Rather, Mr. Collado permitted Island Cargo Services to issue the latter company's house bill. Acting either as OMJ or OC,[2] Mr. Collado allegedly provided only freight forwarding, warehousing, trucking and loading services for each of these shipments. On the basis of those facts, the Commission's Miami AR concluded that Mr. Collado, OMJ and OC knowingly and willfully violated section 10(a)(1) of the Shipping Act by allowing other persons to obtain ocean transportation for property at less than the applicable rates and charges through the device of permitting such persons to unlawfully access OMJ's service contracts.

For the period following revocation of OMJ's license for failure to maintain a bond on January 15, 2010, the Miami AR asserted also that Mr. Collado, OMJ and OC continued to provide ocean freight forwarder services at a time when they no longer possessed a valid OTI license or bond. The Miami AR concluded that Mr. Collado, OMJ and OC violated section 19 by acting as an unlicensed and unbonded OTI on more than 100 occasions beginning on or after January 16, 2010 and continuing through at least October 26, 2010. At the conclusion of the AR's investigation, Mr. Collado requested settlement negotiations with the Commission's Bureau of Enforcement (BOE). However, negotiations with BOE terminated unsuccessfully.

Section 19 of the Shipping Act of 1984, 46 U.S.C. 40901, provides that the Commission shall issue an OTI license only to persons that it determines to be qualified by experience and character. The Commission's regulations at 46 CFR 515.15 implement the standards for licensing under section 19, and state that:

> If the Commission determines, as a result of its investigation, that the applicant: (a) Does not possess the necessary experience or character to render intermediary services; (b) Has failed to respond to any lawful inquiry of the Commission; or (c) Has made any materially false or misleading statement to the Commission; then a letter of intent to deny the application shall be sent to the applicant * * *.

The Commission's regulations thus require denial of an application for an OTI license if the applicant does not possess the necessary character to render OTI services. Based on a finding that the applicant did not possess the necessary character, BCL issued its determination on November 17, 2011 advising Mr. Collado of the intention to deny OC's application.

Pursuant to Mr. Collado's request for hearing, the Commission must determine whether BCL's determination to deny the OTI license application should now be upheld. That decision is factually related to the alleged violations by Mr. Collado, OMJ and OC. Given the common set of facts relating to Mr. Collado's, OMJ's and OC's past (and current) OTI operations, findings upon which the Commission may both analyze BCL's denial of the OTI application and BOE's allegations of Shipping Act violations, a combined proceeding would provide an efficient process.

Now therefore, it is ordered That, pursuant to sections 11 and 19 of the Shipping Act of 1984, 46 U.S.C. 40901, 40902, 41302 and 41304, an adjudicatory proceeding is hereby instituted to determine:

(1) Whether to affirm BCL's November 17, 2011 denial of the OTI application of OC International Freight, Inc. and Omar Collado;

(2) Whether OC International Freight, Inc., OMJ International Freight, Inc. and/or Omar Collado violated Section 10(a)(1) of the Shipping Act, 46 U.S.C. 41102(a), by knowingly and willfully allowing other persons to obtain ocean transportation for property at less than the rates and charges that would otherwise be applicable through the device of permitting such persons to unlawfully access OMJ's service contracts;

(3) Whether OC International Freight, Inc., OMJ International Freight, Inc. and/or Omar Collado violated section 19(a) and (b) of the Shipping Act, 46 U.S.C. 40901 and 40902, by acting as an ocean transportation intermediary without a license or evidence of financial responsibility;

(4) Whether, in the event violations of sections 10 or 19 of the Shipping Act are found, civil penalties should be assessed against OC International Freight, Inc., OMJ International Freight, Inc. and/or Omar Collado, and, if so, the amount of penalties to be assessed; and

(5) Whether, in the event violations are found, appropriate cease and desist orders should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are

[1] OMJ International Freight, Inc. (OMJ) was incorporated on March 15, 1999, and was licensed as a freight forwarder and NVOCC on September 13, 2006. Omar Collado serves as the president, Qualifying Individual and sole owner of OMJ. OMJ's license was automatically revoked on January 15, 2010 following termination of its OTI bond by the surety company. See 46 CFR 515.26.

[2] During this same period, OMJ was dissolved as a Florida corporation, at which time Collado appears to have begun conducting business, in part, under the OC name, using OC letterhead. Neither the dissolution of OMJ (a licensed entity) nor the apparent license transfer from OMJ to OC was reported to BCL. 46 CFR 515.18.

necessary for the development of an adequate record;

It is further ordered That, OC International Freight, Inc., OMJ International Freight, Inc. and Omar Collado be made Respondents in this proceeding;

It is further ordered That the Commission's Bureau of Enforcement be made a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on all parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 2 of the Commission's Rules of Practice and Procedure, 46 CFR 502.2, and shall be served on all parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by April 2, 2013, and the final decision of the Commission shall be issued by July 31, 2013.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2012–8192 Filed 4–4–12; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 20, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *E. Harvey Seaman III, individually and as co-trustee of the Revocable Trust E. Harvey Seaman III U/A 10/21/1998, the Revocable Trust Tamara J. Seaman U/A 10/21/1998, and Tamara J. Seaman, as co-trustee of those trusts,* all of Evansville, Indiana; to acquire voting shares of First Bancorp of Indiana, Inc., and thereby acquire shares of First Federal Savings Bank, both in Evansville, Indiana.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Arthur L. Loomis, II, Patricia A. Loomis, Genevieve E. Loomis, and Julia P. Loomis, all of Niskayuna, New York; Frederick S. Loomis, Anne M. Loomis, and J. Porter Loomis, all of Pratt, Kansas; Howard K. Loomis, Jr., Karen P. Loomis, Katherine P. Loomis, Margaret P. Loomis, and Victoria K. Loomis, all of Los Gatos, California, as individuals and/or trustees of the 2011 Arthur L. Loomis, II Gift Trust, Julia P. Loomis Revocable Trust, Arthur L. Loomis, II Revocable Trust, Genevieve E. Loomis Revocable Trust, all of Niskayuna, New York; Howard K. Loomis Revocable Trust, 2010 Howard K. Loomis Irrevocable Family Trust, Porter Legacy Trust, Florence Porter Loomis Trust, 2010 Florence Porter Loomis Irrevocable Family Trust, 2011 Frederick S. Loomis Gift Trust, 2011 J. Porter Loomis Gift Trust, all of Pratt, Kansas; 2011 Howard K. Loomis Jr. Gift Trust, The Loomis 1993 Revocable Trust, both of Los Gatos, California; and Flopper, L.P., How-Kan, L.P., and Driftwood, LLC, all of Pratt, Kansas; and all as members of the Loomis Family Group,* to retain control of Krey Co. Ltd., and thereby indirectly to retain control of The Peoples Bank, both in Pratt, Kansas.

Board of Governors of the Federal Reserve System, April 2, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–8198 Filed 4–4–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 18, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Giannoulias 2011 Checkspring Trust, Chicago, Illinois and Endy D. Zemenides, as trustee,* to acquire control of CheckSpring Community Corporation, and thereby indirectly acquire control of CheckSpring Bank, both of Bronx, New York.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Travis Carr, Andover, Kansas,* to retain shares and remain a member of the Carr Family Group, which controls Community State Bancshares, Inc., and thereby control Community Bank of Wichita, Inc., both in Wichita, Kansas.

Board of Governors of the Federal Reserve System, March 30, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–8118 Filed 4–4–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 30, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Leackco Banking Holding Company, Inc.,* Wolsey, South Dakota; to acquire 100 percent of the voting shares of ASB Bank Holding Company, and thereby indirectly acquire voting shares of American State Bank of Pierre, both in Pierre, South Dakota.

B. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Carlile Bancshares, Inc.,* Fort Worth, Texas; to acquire 100 percent of the voting shares of Northstar Financial Corporation, and thereby indirectly acquire voting shares of Northstar Bank of Texas, both in Denton, Texas.

Board of Governors of the Federal Reserve System, April 2, 2012.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2012–8199 Filed 4–4–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0062: Docket 2011–0079; Sequence 25]

Federal Acquisition Regulation; Information Collection; Material and Workmanship

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning material and workmanship.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Federal Acquisition Regulations (FAR), and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 7, 2012.

ADDRESSES: Submit comments identified by Information Collection 9000–0062, Material and Workmanship, by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''Information Collection 9000–0062, Material and Workmanship'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''Information Collection 9000–0062, Material and Workmanship.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 9000–0062, Material and Workmanship'' on your attached document.

- *Fax:* 202–501–4067.
- *Mail:* General Services Administration (MVCB), 1275 First Street NE., Washington, DC 20417. ATTN: Hada Flowers/IC 9000–0062, Material and Workmanship.

Instructions: Please submit comments only and cite Information Collection 9000–0062, Material and Workmanship, in all correspondence related to this collection. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis E. Glover, Sr., Procurement Analyst, Federal Acquisition Policy Division, GSA, telephone (202) 501–1448, or via email at *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under Federal contracts where equipment (*e.g.,* pumps, fans, generators, chillers, etc.) is to be installed on a project, the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item, in accordance with the FAR clause 52.236–5, Material and Workmanship.

The Government uses the data to determine if the equipment meets the contract requirements in the categories of performance, construction, and durability. This data is placed in the contract file and used during the inspection of the equipment when it arrives on the project and when it is made operable.

B. Annual Reporting Burden

Respondents: 3,160.

Responses per Respondent: 2.0.

Annual Responses: 6,320.

Hours per Response: .25.

Total Burden Hours: 1,580.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVCB), 1275 First Street NE., Washington, DC 20417, telephone (202) 501–4755. Please cite OMB Control No. 9000–0062, Material and Workmanship, in all correspondence.

Dated: March 26, 2012.

Laura Auletta,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2012–8143 Filed 4–4–12; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Request for Information on Prescription Medication Adherence

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of the Assistant Secretary for Health, Office of the Surgeon General of the United States Public Health Service.

ACTION: Request for information.

SUMMARY: The Office of the Assistant Secretary for Health is seeking information about causes, impact and potential solutions associated with the public health problem of prescription medication non-adherence in adults with chronic conditions. The purpose of this notice is to provide individuals and organizations with the opportunity to identify issues relevant to all levels of government, as well as individuals, health care providers, and industry and private organizations in efforts to improve medication adherence in adults with chronic conditions. Comments that provide input on and evidence from interventions that improve adherence are particularly encouraged.

Comments must be in writing and should not exceed 500 words. All comments will receive careful consideration. However, persons and organizations submitting comments will not receive individual responses.

DATES: Individuals and organizations interested in providing information must submit their comments on or before May 7, 2012. Comments received after this date will not be considered.

ADDRESSES: Department of Health and Human Services, Office of the Surgeon General, Room 710–H, 200 Independence Ave., SW., Washington, DC 20201. Comments may also be sent via email to *medadhere@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Dawn Alley, Ph.D., Office of the Surgeon General, by telephone (202–205–9491) or email (*Dawn.Alley@hhs.gov*).

SUPPLEMENTARY INFORMATION: Many different factors can contribute to poor medication adherence, including copayments, difficulty remembering and managing complex regimens, and poor health literacy. Solutions to this problem will need to involve both the health-care community and patients. This request for information is intended to solicit comments on both barriers to medication adherence and strategies for overcoming those barriers to improve public health.

Dated: March 29, 2012.

Boris Lushniak,

Deputy Surgeon General.

[FR Doc. 2012–8179 Filed 4–4–12; 8:45 am]

BILLING CODE 4150–49–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request; OAA Title III–C Evaluation

AGENCY: Administration on Aging, HHS.

ACTION: Notice

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to

OAA Title III–C Evaluation

DATES: Submit written or electronic comments on the collection of information by June 4, 2012.

ADDRESSES: Submit electronic comments on the collection of information to: *Jennifer.klocinski@aoa.hhs.gov.*

Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Jennifer Klocinski at 202–357–0146.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Describe Collection of Information

The mission of the Administration on Aging (AoA), operating through the Older Americans Act (OAA) programs, is to develop a comprehensive, coordinated and cost-effective system of home and community based services that helps elderly individuals to maintain their health and independence in their homes and communities and support family caregivers of older adults and grandparents caring for grandchildren, who are essential to making community living possible.

The OAA Title III–C Elderly Nutrition Services Program (statutory authority is contained in Title II section 205(a)(2)(A), and Title III sections 311, 331, 336 and 339 of the Older Americans Act (OAA) (42U.S.C. 3032), as amended by the Older Americans Act Amendments of 2006, P.L. 109–365) is part of these comprehensive home- and community-based services. It is intended to reduce hunger and food insecurity, reduce social isolation and improve the health and well-being of the older adult who participate.

The Older Americans Act requires AoA to conduct evaluations of OAA programs. The requirements stipulated under 206(a) of the OAA direct that ''The Secretary shall measure and evaluate the impact of all programs authorized by this Act, their effectiveness in achieving stated goals in

general, and in relation to their cost, their impact on related programs, their effectiveness in targeting for services under this Act unserved older individuals with greatest economic need (including low-income minority individuals and older individuals residing in rural areas) and unserved older individuals with greatest social need (including low-income minority individuals and older individuals residing in rural areas), and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated''.

The purpose of this data collection is to fulfill this requirement and understand how well this program is meeting its goals and mission through the conduct of a process and outcome evaluation that is a rigorous and independent assessment of the Program's progress, efficiency and effectiveness. This information collection will enable AoA to effectively report its results to the President, to Congress, to the Department of Health and Human Services and to the public. The information will also aid in program refinement and continuous improvement.

The evaluation design is comprised of three primary components:

1. *A process study,* which examines the strategies, activities, and resources of the program at each level of the Aging Network—State Unit on Aging (SUA), Area Agency on Aging (AAA), and Local Service Provider (LSP);

2. *A cost study,* which determines the cost per meal by cost category and program type at the local service provider level; and

3. *A client outcome study,* which examines the health and social effects of the program on participants compared to non-participants. Included is an analysis of the nutrient quality of the meals provided.

The process study will include all 56 SUAs, a sample of AAAs (N=300), a sample of local service providers (N=200), and a sample of program participants and non-participants (N=2400). The SUA process component includes a short faxable data verification survey which asks the SUA to verify basic information on topics such as organization structure, staff and volunteers and population served and a survey that covers a variety of topics. The AAA process component includes a short faxable survey that focuses on program funding, staffing, and client characteristics and a web-based survey that covers a range of topics. The local service provider process component includes a short faxable survey that is comparable to the AAA faxable survey and a web-based survey that covers a range of topics. The cost study will be conducted with a sample of local service providers (including AAAs that provide direct nutrition services) and includes a data collection tool that asks about the component costs associated with meal production and delivery.

The client outcome study includes subcomponents: (1) A survey of a matched sample of program participants and non-participants and consists of an assessment of health and well-being outcomes, individual level characteristics, and program service use and quality assessments; (2) an assessment of diet quality using a 24–Hour Recall of nutrient intake; (3) a study of healthcare utilization using linked Medicare files with client data collected via the initial survey described above and brief, follow-up interviews to measure service use over the year following the initial survey; and (4) an analysis of the nutrient quality of the meals provided to program participants collected from the local service providers. Data will be collected via face-to-face interviews with the aid of Computer Assisted Personal Interview (CAPI) software. Respondents' diet quality and the nutrient content of the meals provided through the program will be measured using the USDA's Automated Multiple Pass Method (AMPM) software. Respondents will be re-contacted at 6 and 12 months via telephone with a brief survey to measure frequency of participation in the Program since the previous interview.

This information will be used by AoA to measure how well and under what circumstances does the OAA Title III–C Elderly Nutrition Services Program meet its legislative intent and goals. The proposed data collection tools may be found on the AoA Web site at *http://www.aoa.gov/AoARoot/Program_Results/Program_Evaluation.aspx.*

AoA estimates the burden of this collection of information as follows: 1,432.08 hours for organizations and 3,336.00 hours for individuals for a total of 4,768.08 hours.

Dated: April 2, 2012.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2012–8241 Filed 4–4–12; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0330]

Ashish Macwan: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Ashish Macwan for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Macwan was convicted of one count of conspiracy to commit an offense against the United States for conduct relating to the development and approval, including the process for development and approval, of a drug product and to the regulation of drug products under the FD&C Act. In addition, the type of conduct underlying the conviction undermined the process for the regulation of drugs. Mr. Macwan was given notice of the proposed debarment and an opportunity to request a hearing within the time frame prescribed by regulation. Mr. Macwan failed to request a hearing, which constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective April 5, 2012.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg, Rm. 4144, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(II) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(II)) permits FDA to debar an individual if it finds that the individual has been convicted of a conspiracy to commit a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product or relating to the regulation of any drug product under the FD&C Act and if FDA finds that the type of conduct that

served as the basis for the conviction undermines the process for the regulation of drugs.

On November 30, 2010, judgment was entered against Mr. Macwan in the United District Court for the District of New Jersey based upon a plea of guilty to one count of conspiracy to commit an offense against the United States, in violation of 18 U.S.C. 371.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for the conviction is as follows: Mr. Macwan was employed at Able Laboratories, Inc. (Able) as a chemist in Able's Quality Control Department from in or around mid-1999 through May 2003. In or around January 2005, Mr. Macwan was promoted to Assistant Manager in the Quality Control Department and was responsible for supervising numerous chemists, monitoring the chemists' compliance with current Good Manufacturing Practices, as required by the FD&C Act and FDA regulations. Able developed, manufactured, and sold several generic drug products, including products for cardiac and psychiatric conditions and prescription pain relievers.

From in or around 1999 through on or about May 19, 2005, Mr. Macwan conspired to cause the introduction and delivery for introduction into interstate commerce of a drug that was adulterated and misbranded, with an intent to defraud and mislead, contrary to 18 U.S.C. 371, 21 U.S.C. 331(a), and 333(a)(2).

Mr. Macwan and his coconspirators impaired, impeded, defeated, and obstructed FDA's lawful government function to approve the manufacture and distribution of generic drug products by violating Good Manufacturing Practices; violating Standards of Procedure by failing to properly investigate, log, and archive questionable, aberrant, and unacceptable laboratory results so that Able could conceal improprieties and continue to distribute and sell its drug products; manipulating and falsifying testing data and information to conceal from FDA failing laboratory results relating to Able's generic drug products; creating and maintaining false, fraudulent, and inaccurate test results to make it appear that drug products had the requisite identity, strength, quality, and purity characteristics so the drug products could be distributed and sold to increase Able's sales and profit; and creating and maintaining false, fraudulent, and inaccurate data and records to obtain FDA approval to market new product lines.

In furtherance of the conspiracy, in or around September 2003, Mr. Macwan falsified and manipulated testing data relating to the finished product testing for acetaminophen with codeine phosphate, a prescription pain relieving drug product. In addition, in or around September 2003, Mr. Macwan and his coconspirators falsified and manipulated testing data relating to the finished product testing for phentermine hydrochloride, a prescription drug developed to treat obesity.

As a result of his conviction, on December 20, 2011, FDA sent Mr. Macwan a notice by certified mail proposing to debar him for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(II) of the FD&C Act, that Mr. Macwan was convicted of a conspiracy under Federal law for conduct relating to the development and approval, including the process for development and approval of a drug product, and to the regulation of drug products under the FD&C Act, and the conduct that served as a basis for the conviction undermined the process for the regulation of drugs. The proposal also offered Mr. Macwan an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Macwan failed to request a hearing within the timeframe prescribed by regulation and, therefore, has waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR Part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(II) of the FD&C Act, under authority delegated to him (Staff Manual Guide 1410.35), finds that Ashish Macwan has been convicted of a conspiracy under Federal law for conduct relating to the development and approval, including the process for development and approval of a drug product, and to the regulation of drug products under the FD&C Act, and that the type of conduct that served as a basis for the conviction undermined the process for the regulation of drugs.

As a result of the foregoing finding, Mr. Macwan is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see sections 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(iii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Macwan, in any capacity during Mr. Macwan's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Macwan provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Macwan during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Mr. Macwan for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA–2009–N–0330 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 2012.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2012–8233 Filed 4–4–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0659]

Shashikant Shah: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Shashikant Shah for 5 years from

providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Shah was convicted of one count of conspiracy to commit an offense against the United States for conduct relating to the development and approval, including the process for development and approval, of a drug product and to the regulation of drug products under the FD&C Act. In addition, the type of conduct underlying the conviction undermined the process for the regulation of drugs. Mr. Shah was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Mr. Shah failed to request a hearing, which constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective April 5, 2012.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., rm. 4144, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(II) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(II)) permits FDA to debar an individual if it finds that the individual has been convicted of a conspiracy to commit a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product or relating to the regulation of any drug product under the FD&C Act, and if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On December 17, 2010, judgment was entered against Mr. Shah in the U.S. District Court for the District of New Jersey based upon a plea of guilty to one count of conspiracy to commit an offense against the United States, in violation of 18 U.S.C. 371.

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for the conviction is as follows: Mr. Shah was employed at Able Laboratories, Inc. (Able) as vice president of quality assurance/quality control and regulatory affairs from in or around mid-1999 through in or around December 27, 2004. Able developed, manufactured, and sold several generic drug products, including products for cardiac and psychiatric conditions and prescription pain relievers.

As Able's vice president of quality control and regulatory affairs, Mr. Shah was responsible for supervising as many as 100 employees, including numerous managers and supervisors, and several laboratory chemists. Mr. Shah's other responsibilities included supervising the quality control and testing processes of the drug products manufactured and sold by Able, ensuring compliance with current Good Manufacturing Practices, as required by the FD&C Act and FDA regulations.

From in or around 1999 through on or about May 19, 2005, Mr. Shah conspired to cause the introduction and delivery for introduction into interstate commerce of a drug that was adulterated and misbranded, with an intent to defraud and mislead, contrary to 18 U.S.C. 371 and 21 U.S.C. 331(a) and 333(a)(2).

Mr. Shah and his co-conspirators impaired, impeded, defeated, and obstructed FDA's lawful government function to approve the manufacture and distribution of generic drug products by violating Good Manufacturing Practices; violating standards of procedure by failing to properly investigate, log, and archive questionable, aberrant, and unacceptable laboratory results so that Able could conceal improprieties and continue to distribute and sell its drug products; manipulating and falsifying testing data and information to conceal from FDA failing laboratory results relating to Able's generic drug products; creating and maintaining false, fraudulent, and inaccurate test results to make it appear that drug products had the requisite identity, strength, quality, and purity characteristics so the drug products could be distributed and sold to increase Able's sales and profit; and creating and maintaining false, fraudulent, and inaccurate data and records to obtain FDA approval to market new product lines.

In furtherance of the conspiracy, in or around 2002, Mr. Shah supervised the falsification of testing data for Able's butalbital, acetaminophen, and caffeine products. In or around 2003, Mr. Shah supervised the falsification of testing data for Able's methylphenidate product. Mr. Shah additionally directed and supervised the creation of false and fraudulent entries in chemist laboratory notebooks, and in the corresponding process validation binders, relating to Able's abbreviated new drug application for lithium carbonate extended release tablets, for which Able received FDA approval on or about April 21, 2003.

As a result of his conviction, on December 20, 2011, FDA sent Mr. Shah a notice by certified mail proposing to debar him for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(II) of the FD&C Act that Mr. Shah was convicted of a conspiracy under Federal law for conduct relating to the development and approval, including the process for development and approval of a drug product, and to the regulation of drug products under the FD&C Act, and the conduct that served as a basis for the conviction undermined the process for the regulation of drugs. The proposal also offered Mr. Shah an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Shah failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under Section 306(b)(2)(B)(i)(II) of the FD&C Act, under authority delegated to him (Staff Manual Guide 1410.35), finds that Shashikant Shah has been convicted of a conspiracy under Federal law for conduct relating to the development and approval, including the process for development and approval of a drug product, and to the regulation of drug products under the FD&C Act, and that the type of conduct that served as a basis for the conviction undermined the process for the regulation of drugs.

As a result of the foregoing finding, Mr. Shah is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD& C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**), (see sections 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(iii), and 321(dd))). Any person

with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Shah, in any capacity during Mr. Shah's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Shah provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7))). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Shah during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Mr. Shah for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 355a(d)(1)) should be identified with Docket No. FDA–2011–N–0659 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 2012.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2012–8229 Filed 4–4–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0331]

Jose Concepcion: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) debarring Jose Concepcion for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on findings that Mr. Concepcion was convicted of conspiracy to commit an offense against the United States, that the conduct that served as the basis for the felony conspiracy conviction relates to the development or approval, including the process for development or approval, of any drug product and relates to the regulation of drug products under the FD&C Act, and that the type of conduct underlying the conviction undermines the process for the regulation of drugs. Mr. Concepcion was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Mr. Concepcion failed to request a hearing. Mr. Concepcion's failure to request a hearing constitutes a waiver of his right to a hearing concerning this action.

DATES: This order is effective April 5, 2012.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., rm. 4144, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(II) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(II)) permits FDA to debar an individual if it finds that the individual has been convicted of a conspiracy to commit a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product or otherwise relating to the regulation of a drug product under the FD&C Act, if FDA finds that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs.

On December 1, 2010, based upon a plea of guilty to one count of conspiracy to commit an offense against the United States, in violation of 18 U.S.C. 371, judgment was entered against Mr. Concepcion in the U.S. District Court for the District of New Jersey.

FDA's finding that debarment is appropriate is based on the conspiracy conviction referenced herein. The factual basis for the conviction is as follows: Mr. Concepcion was employed at Able Laboratories, Inc. (Able) from mid-1998 until January 2005. Able developed, manufactured, and sold several generic drug products, including products for cardiac and psychiatric conditions and prescription pain relievers. Mr. Concepcion was employed as a chemist in the Quality Control Department performing analytical tests on Able products to ensure product safety and effectiveness from in or around mid-1998 to around January 2001. In or around January 2001, Mr. Concepcion was promoted to group leader and around April 2002, he was promoted to supervisor in the Quality Control Department.

As group leader and supervisor in the Quality Control Department, Mr. Concepcion's responsibilities included supervising numerous chemists and technicians who performed analytical quality control tests on Able's generic drug products to ensure product safety and effectiveness; monitoring the chemists' compliance with current Good Manufacturing Practices, as required by the FD&C Act and FDA regulations; and ensuring compliance with Able's standard operating procedures (SOPs).

From in or around 1999 through January, 2005, Mr. Concepcion conspired to cause the introduction and delivery for introduction into interstate commerce of a drug that was adulterated and misbranded, with an intent to defraud and mislead, contrary to 18 U.S.C. 371 and 21 U.S.C. 331(a) and 333(a)(2).

Mr. Concepcion and his co-conspirators impaired, impeded, defeated, and obstructed FDA's lawful government function to approve the manufacture and distribution of generic drug products by violating Good Manufacturing Practices; violating SOPs by failing to properly investigate, log, and archive questionable, aberrant, and unacceptable laboratory results so that Able could conceal improprieties and continue to distribute and sell its drug products; manipulating and falsifying testing data and information to conceal from FDA failing laboratory results relating to Able's generic drug products; creating and maintaining false, fraudulent, and inaccurate test results to make it appear that drug products had the requisite identity, strength, quality, and purity characteristics so the drug products could be distributed and sold to increase Able's sales and profit; and creating and maintaining false, fraudulent, and inaccurate data and records to obtain FDA approval to market new product lines.

In furtherance of the conspiracy, in or around December 2001, Mr. Concepcion and his co-conspirators falsified and manipulated testing data relating to stability tests for propoxphene napsylate and acetaminophen.

As a result of his conviction, on January 6, 2012, FDA sent Mr. Concepcion a notice by certified mail proposing to debar him for 5 years from providing services in any capacity to a

person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(b)(2)(B)(i)(II) of the FD&C Act, that Mr. Concepcion was convicted of conspiracy to commit an offense against the United States, that the conduct that served as the basis for the felony conspiracy conviction relates to the development or approval, including the process for development or approval, of any drug product and relates to the regulation of drug products under the FD&C Act, and that the conduct that served as a basis for the conviction undermines the process for the regulation of drugs. The proposal also offered Mr. Concepcion an opportunity to request a hearing, providing him 30 days from the date of receipt of the letter in which to file the request, and advised him that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Concepcion failed to request a hearing within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(II) of the FD&C Act under authority delegated to him (Staff Manual Guide 1410.35), finds that Jose Concepcion has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the FD&C Act, and that the type of conduct that served as a basis for the conviction undermines the process for the regulation of drugs.

As a result of the foregoing finding, Mr. Concepcion is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see DATES), (see section 306(c)(1)(B), (c)(2)(A)(iii), and 201(dd) of the FD&C Act (21 U.S.C. 335a(c)(1)(B), (c)(2)(A)(iii), and 321(dd))). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Mr. Concepcion, in any capacity during Mr. Concepcion's debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Mr. Concepcion provides services in any capacity to a person with an approved or pending drug product application during his period of debarment he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Mr. Concepcion during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Any application by Mr. Concepcion for termination of debarment under section 306(d)(1) of the FD&C Act (21 U.S.C. 355a(d)(1)) should be identified with Docket No. FDA–2009–N–0331 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 27, 2012.

Armando Zamora,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. 2012–8249 Filed 4–4–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 21, 2012, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, salons A, B, C, and D, 620 Perry Pkwy., Gaithersburg, MD 20877. The hotel telephone number is 301–977–8900.

Contact Person: Avena Russell, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1535, Silver Spring, MD 20993–0002, *Avena.Russell@fda.hhs.gov,* 301–796–3805, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 21, 2012, the committee will discuss, make recommendations, and vote on information related to the premarket approval application, sponsored by Dune Medical Devices, Inc., for the MarginProbe System, that utilizes electromagnetic waves to characterize human tissue in real time and provides intraoperative information on the malignancy of the surface of the ex vivo lumpectomy specimen.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 11, 2012. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before

June 1, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 4, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ann Marie Williams, at *AnnMarie.Williams@fda.hhs.gov* or 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 30, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–8166 Filed 4–4–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0001]

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 15, 2012, from 8:30 a.m. to 5 p.m. and May 16, 2012 from 8 a.m. to 4 p.m.

Location: Hilton Washington DC/North Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20877, 301–977–8900. For those unable to attend in person, the meeting will also be Web cast. The Web cast will be available at the following links.

Blood Products Advisory Committee Web Cast Link

May 15

http://fda.yorkcast.com/webcast/Viewer/?peid=ba104b31fe4c4c099568bacda9a4e5401d.

May 16

http://fda.yorkcast.com/webcast/Viewer/?peid=19caf3c8c1624acdaab205ddde9c48581d.

Contact Person: Bryan Emery or Rosanna Harvey, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–1297, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On May 15, 2012, the committee will discuss as a device panel the evaluation of the safety and effectiveness of the OraQuick In-Home HIV Test. On May 16, 2012, the committee will discuss the evaluation of possible new plasma products frozen following in-process storage at room temperature for up to 24 hours, namely plasma for transfusion prepared from Whole Blood held at room temperature for up to 24 hours prior to separation and freezing, or from apheresis plasma held at room temperature for up to 24 hours before freezing. In the afternoon, the committee will hear update presentations on the following topics: HHS activities related to the evaluation of the donor deferral policy for men who have had sex with other men; a summary of the November 8–9, 2011, public workshop on hemoglobin standards and maintaining an adequate blood supply; and a summary of the November 29, 2011, public workshop on data and data needs to advance risk assessment for emerging infectious diseases for blood and blood products.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 8, 2012. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 3:15 p.m. on May 15, 2012, and between approximately 11:30 a.m. and 12:45 p.m. on May 16, 2012. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 30, 2012. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 1, 2012.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Bryan Emery, 301–827–1277, or Rosanna Harvey, 301–827–1297, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/Advisory*

Committees/AboutAdvisoryCommittees/ucm111462.htm for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 30, 2012.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2012–8167 Filed 4–4–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–E–0482]

Determination of Regulatory Review Period for Purposes of Patent Extension; FLECTOR

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FLECTOR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov*. Submit written petitions along with three copies and written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product FLECTOR (diclofenac epolamine). FLECTOR is indicated for the topical treatment of acute pain due to minor strains, sprains, and contusions. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FLECTOR (U.S. Patent No. 5,607,690) from Altergon S.A., and Teikoku Seiyaku Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration and that FDA determine the product's regulatory review period. In a letter dated March 20, 2012, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FLECTOR represented the first permitted commercial marketing or use of the product.

FDA has determined that the applicable regulatory review period for FLECTOR is 4,031 days. Of this time, 1,796 days occurred during the testing phase of the regulatory review period, while 2,235 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355(i)) became effective:* January 20, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 20, 1996.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* December 19, 2000. The applicant claims December 18, 2000, as the date the new drug application (NDA) for FLECTOR (NDA 21–344) was initially submitted. However, FDA records indicate that NDA 21–234 is the correct application number for FLECTOR, rather than NDA 21–344. NDA 21–234 for FLECTOR was submitted on December 19, 2000.

3. *The date the application was approved:* January 31, 2007. FDA has verified the applicant's claim that FLECTOR (NDA 21–234) was approved on January 31, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments and ask for a redetermination by June 4, 2012. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 2, 2012. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments and written petitions. It is only necessary to send one set of comments. However, if you submit a written petition, you must submit three copies of the petition. Identify comments with the docket number found in brackets in the heading of this document.

Comments and petitions that have not been made publicly available on regulations.gov may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 16, 2012.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 2012–8235 Filed 4–4–12; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1984.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Nursing Scholarship Program (OMB No. 0915–0301)—[Revision]

The Nursing Scholarship Program (NSP) is a competitive Federal program, which awards scholarships to individuals for attendance at accredited schools of nursing. The Bureau of Clinician Recruitment and Service (BCRS) in HRSA administers the program. The scholarship consists of payment of tuition, fees, other reasonable educational costs, and a monthly support stipend. In return, the students agree to provide a minimum of 2 years of full-time clinical service (or an equivalent part-time commitment, as approved by the NSP) at a health care facility with a critical shortage of nurses as defined by the program.

NSP recipients must be willing to (and are required to) fulfill their NSP service commitment at a health care facility with a critical shortage of nurses in the United States, which includes, in addition to the several States, only: the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the U.S. Virgin Islands, American Samoa, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Students who are uncertain of their commitment to provide nursing care in a health care facility with a critical shortage of nurses in the United States or these territories are advised not to participate in this program.

The NSP needs to collect data to determine an applicant's eligibility for the program, to monitor a participant's continued enrollment in a school of nursing, to monitor the participant's compliance with the NSP service obligation, and to obtain data on its program to ensure compliance with statutory mandates and prepare annual reports to Congress. The following information will be collected: (1) From the applicants and/or the schools—general applicant and nursing school data such as full name, location, tuition/fees, and enrollment status; (2) from the schools, on an annual basis—data concerning tuition/fees and student enrollment status; and (3) from the participants and their health care facilities with a critical shortage of nurses, on a biannual basis—data concerning the participant's employment status, work schedule and leave usage. BCRS enters the cost information into its information data system, along with the projected amount for the monthly stipend, to determine the amount of each scholarship award.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Application	4,000	1	4,000	2	8,000
In-School Monitoring	500	1	500	2	1,000
In-Service Monitoring	600	2	1,200	1	1,200
Total	5,100	.....	5,700	.....	10,200

Email comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–29, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 30, 2012.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2012–8147 Filed 4–4–12; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Center for HIV/AIDS Vaccine Immunology and Immunogen Discovery (CHAVI–ID) (UM1).

Date: April 24–27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Rockville Executive Meeting Center, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jay Bruce Sundstrom, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS,

6700B Rockledge Drive, MSC–7616, Room 3119, Bethesda, MD 20892–7616, 301–496–7042, *sundstromj@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreements.

Date: May 1, 2012.

Time: 1:15 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3264, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Lakshmi Ramachandra, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700–B Rockledge Drive, MSC–7616, Room 3264, Bethesda, MD 20892–7616, 301–496–2550, *Ramachandral@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS).

Dated: March 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8211 Filed 4–4–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases: Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Translational Research in Diabetes and Obesity.

Date: May 17, 2012.

Time: 11 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michele L. Barnard, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8214 Filed 4–4–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Loan Repayment Program.

Date: April 25, 2012.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, 5635 Fishers Lane, 3rd Floor Conference Room, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, NHGRI, 5635 Fishers Lane, Suite 4076, Bethesda, MD 20814, 301–594–4280, *mckenneyk@mail.nih.gov.*

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: April 26, 2012.

Time: 11:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Camilla E. Day, Ph.D., Scientific Review Officer, CIDR, National Human Genome Research Institute, National Institutes of Health, 5635 Fishers Lane, Suite 4075, Bethesda, MD 20892, 301–402–8837, *camilla.day@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8213 Filed 4–4–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Program Project Grant Review.

Date: April 25, 2012.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric H. Brown, MS, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, National Institutes of Health, 6701 Democracy Blvd., Room 824, Msc 4872, (301) 594–4955, *browneri@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 28, 2012.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2012–8219 Filed 4–4–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5603–N–22]

Notice of Submission of Proposed Information Collection to OMB; Public Access to HUD Records under the Freedom of Information Act (FIOA) and Production of Material or Provisions of Testimony by HUD Employees

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Section 15.203 of HUD's regulations in 24 CFR specify the manner in which demands for documents and testimony from the Department should be made. Providing the information specified in 24 CFR 15.203 allows the Department to more promptly identify documents and testimony which a requestor may be seeking and determine whether the Department will be able to produce such documents and testimony.

DATES: *Comments Due Date:* May 7, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2501–0022) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–5806. Email: *OIRA_Submission@omb.eop.gov* fax: 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Colette Pollard., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov.* or telephone (202) 402–3400. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Public Access to HUD Records under the Freedom of Information Act (FIOA) and Production of Material or Provisions of Testimony by HUD Employees.

OMB Approval Number: 2501–0022.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Section 15.203 of HUD's regulations in 24 CFR specify the manner in which demands for documents and testimony from the Department should be made. Providing the information specified in 24 CFR 15.203 allows the Department to more promptly identify documents and testimony which a requestor may be seeking and determine whether the Department will be able to produce such documents and testimony.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	106	1		1.5		159

Total Estimated Burden Hours: 159.

Status: Reinstatement with change of a previously approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 30, 2012.

Colette Pollard,

Department Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2012–8243 Filed 4–4–12; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

Ocean Energy Safety Advisory Committee (OESC); Notice of Meeting

AGENCY: Bureau of Safety and Environmental Enforcement (BSEE), Interior.

ACTION: Notice of meeting.

SUMMARY: OESC will meet at the Doubletree by Hilton Houston Intercontinental Airport Hotel in Houston, Texas.

DATES: Thursday, April 26, 2012, from 8 a.m. to 5:30 p.m.

ADDRESSES: Doubletree by Hilton Houston Intercontinental Airport Hotel, 15747 JFK Boulevard, Houston, Texas 77032.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph R. Levine at the Bureau of Safety and Environmental Enforcement, 381 Elden Street, Herndon, Virginia 20170–4187. He can be reached by telephone at (703) 787–1033 or by electronic mail at *joseph.levine@bsee.gov.*

SUPPLEMENTARY INFORMATION: OESC consists of representatives from industry, Federal Government agencies, non-governmental organizations, and the academic community. It provides policy advice to the Secretary of the Interior through the Director of BSEE on matters relating to ocean energy safety, including, but not limited to, drilling and workplace safety, well intervention and containment, and oil spill response.

The agenda for Thursday, April 26, will address safety management systems and safety culture and the OESC Subcommittees' activities to date on oil spill prevention, spill containment, spill response and safety management systems. Interim recommendations will be presented to the OESC from its four subcommittees for consideration and action.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis. Members of the public will have the opportunity to comment on the activities of OESC and related topics on a first-come-first-served basis during the time allotted for public comment and may submit written comments to the

OESC during the meeting or by email to the Committee at *OESC@bsee.gov.*

Minutes of the Ocean Energy Safety Advisory Committee meeting will be available for public inspection on the Committee's Web site at: *http://www.bsee.gov/About-BSEE/Public-Engagement/OESC/Index.aspx.*

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: March 30, 2012.

James A. Watson,

Director, Bureau of Safety and Environmental Enforcement.

[FR Doc. 2012–8180 Filed 4–4–12; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCA 942000 L57000000 BX0000]

Filing of Plats of Survey: California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey and supplemental plats of lands described below are scheduled to be officially filed in the Bureau of Land Management California State Office, Sacramento, California, thirty (30) calendar days from the date of this publication.

ADDRESSES: A copy of the plats may be obtained from the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California 95825, upon required payment.

Protest: A person or party who wishes to protest a survey must file a notice that they wish to protest with the California State Director, Bureau of Land Management, 2800 Cottage Way, Sacramento, California, 95825.

FOR FURTHER INFORMATION CONTACT: Chief, Branch of Geographic Services, Bureau of Land Management, California State Office, 2800 Cottage Way, Room W–1623, Sacramento, California 95825, (916) 978–4310.

SUPPLEMENTARY INFORMATION: These surveys and supplemental plats were executed to meet the administrative needs of various federal agencies; the Bureau of Land Management, Bureau of Indian Affairs, General Services Administration or US Forest Service. The lands surveyed are:

Humboldt Meridian, California

T. 10 N., R. 3 E., supplemental plats of sections 3, 4, 5 and 6 accepted February 16, 2012.
T. 11 N., R. 2 E., supplemental plat of section 36 accepted February 16, 2012.
T. 11 N., R. 3 E., supplemental plats of sections 31, 32, 33 and 34 accepted February 16, 2012.

Mount Diablo Meridian, California

T. 33 N., R. 7 W., dependent resurvey and metes-and-bounds survey accepted February 22, 2012.
T. 12 N., R. 9 E., supplemental plat of the NW ¼ of section 4 accepted March 9, 2012.
T. 18 S., R. 13 E., supplemental plats of sections 33 and 34 accepted March 13, 2012.

San Bernardino Meridian, California

T. 14 N., R. 13 E., amended metes-and bounds survey of tract 37 accepted March 15, 2012.
T. 4 S., R. 4 E., supplemental plat of the NE ¼ of the SE ¼ of section 24 accepted March 21, 2012.

Authority: 43 U.S.C., Chapter 3.

Dated: March 21, 2012.

Daniel E. Schank,

Acting Chief Cadastral Surveyor, California.

[FR Doc. 2012–8244 Filed 4–4–12; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–833]

Certain Digital Models, Digital Data, and Treatment Plans for Use in Making Incremental Dental Positioning Adjustment Appliances, the Appliances Made Therefrom, and Methods of Making the Same; Institution of Investigation Pursuant to 19 U.S.C. 1337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 1, 2012, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Align Technology, Inc. of San Jose, California. On March 22, 2012, Align filed a ''corrected'' complaint. The complaint, as corrected, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain digital models, digital data, and treatment plans for use in making incremental dental positioning adjustment appliances, the appliances made therefrom, and methods of making the same by reason of infringement of certain claims of U.S. Patent No. 6,217,325 (''the '325 patent''); U.S. Patent No. 6,705,863 (''the '863 patent''); U.S. Patent No. 6,626,666 (''the '666 patent''); U.S. Patent No. 8,070,487 (''the '487 patent''); U.S. Patent No. 6,471,511 (''the '511 patent''); U.S. Patent No. 6,722,880 (''the '880 patent''); and U.S. Patent No. 7,134,874 (''the '874 patent''). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on March 29, 2012, *ordered that* —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital models, digital data, and treatment plans for use in making incremental dental positioning adjustment appliances, the

appliances made therefrom, and methods of making the same that infringe one or more of claims 1–3, 11, 13, 14, 21, 30–35, 38, and 39 of the '325 patent; claim 1 of the '511 patent; claims 1, 3, 7, and 9 of the '666 patent; claims 1 and 4–8 of the '863 patent; claims 1 and 3 of the '880 patent; claims 1, 2, 38, 39, 41, and 62 of the '874 patent; and claims 1, 3, 5, and 7–9 of the '487 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Align Technology, Inc., 2560 Orchard Parkway, San Jose, CA 95131.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ClearCorrect Pakistan (Private), Ltd., Azia Cottage, 9–Kanal Park, Gulberg II, Lahore, Pakistan.

ClearCorrect Operating, LLC, 15151 Sommermeyer Street, Houston, TX 77041–5332.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: March 30, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8140 Filed 4–4–12; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–472 (Third Review)]

Silicon Metal From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on silicon metal from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on November 1, 2011 (76 FR 67476) and determined on February 6, 2012 that it would conduct an expedited review (77 FR 10774, February 23, 2012).

The Commission transmitted its determination in this review to the Secretary of Commerce on March 30, 2012. The views of the Commission are contained in USITC Publication 4312 (March 2012), entitled *Silicon Metal from China: Investigation No. 731–TA–472 (Third Review).*

By order of the Commission.

Issued: March 30, 2012.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2012–8148 Filed 4–4–12; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Deanna Tanner Okun did not participate in this review.

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1585]

Meeting (Webinar) of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) announces a meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

Dates and Locations: The meeting will take place online, as a webinar, on Friday, April 20, 2012 from 1 to 5 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Robin Delany-Shabazz, Designated Federal Official, OJJDP, *Robin.Delany-Shabazz@usdoj.gov*, or 202–307–9963. [**Note:** This is not a toll-free number.]

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App. 2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information may be found at *www.facjj.org.*

Meeting Agenda: The agenda will include: (a) Welcome and introductions; (b) remarks from the Administrator; (c) discussion of the OJJDP preliminary program plan; (d) discussion of issues related to information-sharing, the Federal Education Rights and Privacy Act and youth justice; and (e) discussion of subcommittee options and work products; (f) other business; and (i) adjournment.

Members of the FACJJ and of the public who wish to attend must pre-register online at *https://ojjdptta.webex.com/ojjdptta/onstage/g.php?d=746513952&t=a* no later than

Wednesday, April 18, 2012. Upon registration, information will be sent to you at the email you provide to enable you to connect to the webinar. If you cannot access the registration using the link provided above, please try to access the online registration via the link on the FACJJ Web site at *www.facjj.org.* Should problems arise with webinar registration, call Michelle Duhart-Tonge at 703–789–4712. [**Note:** this is not a toll-free telephone number.] Members of the public will be able to listen to and view the webinar as observers but will not be able to actively participate.

Written Comments: Interested parties may submit written comments in advance by Monday, April 16, 2012, to Robin Delany-Shabazz, Designated Federal Official for the Federal Advisory Committee on Juvenile Justice, OJJDP, by email to *Robin.Delany-Shabazz@usdoj.gov.* Alternatively, fax your comments to 202–307–2819 and call Joyce Mosso Stokes at 202–305–4445 to ensure its receipt. [**Note:** These are not toll-free numbers.]

Melodee Hanes,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2012–8132 Filed 4–4–12; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment: Definition of ''Plan Assets''—Participant Contributions; Final Rules and Class Prohibited Transaction Exemption 2006–16 Relating to Terminated Individual Account Plans; Etc.

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at *reginfo.gov* (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before June 4, 2012.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210, (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

I. Supplementary Information

This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Definition of ''Plan Assets''—Participant Contributions.

Type of Review: Extension of a currently approved information collection.

OMB Number: 1210–0100.

Affected Public: Business or other for-profit; not-for-profit institutions; individuals.

Respondents: 1.

Responses: 251.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $1,025.

Description: The regulation concerning plan assets and participant contributions provides guidance for fiduciaries, participants, and beneficiaries of employee benefit plans regarding how participant contributions to pension plans must be handled when they are either paid to the employer by the participant or directly withheld by the employer from the employee's wages for transmission to the pension plan. In particular, the regulation sets standards for the timely delivery of such participant contributions, including an outside time limit for the employer's holding of participant contributions. In addition, for those employers who may have difficulty meeting the regulation's outside deadlines for transmitting participant contribution, the regulation (29 CFR 2510.3–102(d) provides the opportunity for the employer to obtain an extension of the time limit by providing participants and the Department with a notice that contains specified information. The ICR pertains to this notice requirement. The Department previously requested review of this information collection and obtained approval from the Office of Management and Budget (OMB) under OMB control number 1210–0100. That approval is scheduled to expire on July 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Final Rules and Class Prohibited Transaction Exemption 2006–16 relating to Terminated Individual Account Plans.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0127.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 37,822.

Responses: 100.

Estimated Total Burden Hours: 7,433.

Estimated Total Burden Cost (Operating and Maintenance): $3,366,300.

Description: The abandoned plan initiative includes the following actions, which impose the following information collections:

1. Qualified Termination Administrator (QTA) Regulation: The QTA regulation creates an orderly and efficient process by which a financial institution that holds the assets of a plan that is deemed to have been abandoned may undertake to terminate the plan and distribute its assets to participants and beneficiaries holding accounts under the plan, with protections and approval of the Department under the standards of the regulation. The regulation requires the QTA to provide certain notices to the Department, to participants and beneficiaries, and to the plan sponsor (or service providers to the plan, if necessary), and to keep certain records pertaining to the termination.

2. Abandoned Plan Terminal Report Regulation: The terminal report regulation provides an alternative, simplified method for a QTA to satisfy the annual report requirement otherwise applicable to a terminating plan by filing a special simplified terminal report with the Department after terminating an abandoned plan and

distributing its accounts to participants and beneficiaries.

3. Terminated Plan Distribution Regulation: The terminated plan distribution regulation establishes a safe harbor method by which fiduciaries who are terminating individual account pension plans (whether abandoned or not) may select an investment vehicle to receive account balances distributed from the terminated plan when the participant has failed to provide investment instructions. The regulation requires the fiduciaries to provide advance notice to participants and beneficiaries of how such distributions will be invested, if no other investment instructions are provided.

4. Abandoned Plan Class Exemption: The exemption permits a QTA that terminates an abandoned plan under the QTA regulation to receive payment for its services from the abandoned plan and to distribute the account balance of a participant who has failed to provide investment direction into an individual retirement account (IRA) maintained by the QTA or an affiliate. Without the exemption, financial institutions could be unable to receive payment for services rendered out of plan assets without violating ERISA's prohibited transaction provisions and would therefore be highly unlikely to undertake the termination of abandoned plans. The exemption includes the condition that the QTA keep records of the distributions for a period of six years and make such records available on request to interested persons (including the Department and participants and beneficiaries). If a QTA wishes to be paid out of plan assets for services provided prior to becoming a QTA, the exemption requires that the QTA enter into a written agreement with a plan fiduciary or the plan sponsor prior to receiving payment and that a copy of the agreement be provided to the Department.

5. PTE 2004–16 (Automatic Rollover Exemption): Also included in this ICR are the notice and recordkeeping requirements contained in PTE 2004–16, which permits a pension plan fiduciary that is a financial institution and is also the employer maintaining an individual account pension plan for its employees to establish, on behalf of its separated employees, an IRA at a financial institution that is either the employer or an affiliate, which IRA would receive mandatory distributions that the fiduciary ''rolls over'' from the plan when an employee terminates employment.

Because all of these regulations and exemptions relate to terminating or abandoned plans and/or to distribution and rollover of distributed benefits for which no participant investment election has been made, the Department has combined the paperwork burden for all of these actions into one ICR. In the Department's view, this combination allows the public to have a better understanding of the aggregate burden imposed on the public for these related regulatory actions. OMB approved the ICR under OMB control number 1210–0127, which is scheduled to expire on July 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: ERISA Summary Annual Report.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0040.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 716,000.

Responses: 156,047,000.

Estimated Total Burden Hours: 2,142,100.

Estimated Total Burden Cost (Operating and Maintenance): $46,551,000.

Description: Section 104(b)(3) of ERISA and the regulation published at 29 CFR 2520.104b–10 require, with certain exceptions, that administrators of employee benefit plans furnish annually to each participant and certain beneficiaries a summary annual report (SAR) meeting the requirements of the statute and regulation. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides current information about the plan and assists those who receive it in understanding the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues.

EBSA previously submitted the information collection provisions in the regulation at 29 CFR 2520.104b–10 to the Office of Management and Budget (OMB) for review in an information collection request (ICR). OMB approved the ICR under OMB Control No. 1210–0040. The ICR approval is scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Exemption 2002–12, Cross-Trades of Securities by Index and Model-Driven Funds.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0115.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 60.

Responses: 840.

Estimated Total Burden Hours: 855.

Estimated Total Burden Cost (Operating and Maintenance): $509.

Description: PTE 2002–12 exempts certain transactions that would be prohibited under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by managers (Managers), and among such Funds and certain large accounts (Large Accounts) that engage such Managers to carry out a specific portfolio restructuring program or to otherwise act as a ''trading adviser'' for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering the transaction costs to plans in a number of ways from what they would be otherwise.

In order for the Department to grant an exemption for a transaction or class of transactions that would otherwise be prohibited under ERISA, the statute requires the Department to make a finding that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. To ensure that Managers have complied with the requirements of the exemption, the Department has included in the exemption certain recordkeeping and disclosure obligations that are designed to safeguard plan assets by periodically providing information to plan fiduciaries, who generally must be independent about the cross-trading program. Initially, where plans are not invested in Funds, Managers must furnish information to plan fiduciaries about the cross-trading program, provide a statement that the Manager will have a potentially conflicting division of loyalties, and obtain written authorization from a plan fiduciary for a plan to participate in a cross-trading program. For plans that are currently invested in Funds, the Manager must provide annual notices to update the plan fiduciary and provide the plan with an opportunity to withdraw from the program. For Large Accounts, prior to the cross-trade, the Manager must

provide information about the cross-trading program and obtain written authorization from the fiduciary of a Large Account to engage in cross-trading in connection with a portfolio restructuring program. Following completion of the Large Account's restructuring, information must be provided by the Manager about all cross-trades executed in connection with a portfolio-restructuring program. Finally, the exemption requires that Managers maintain for a period of 6 years from the date of each cross-trade the records necessary to enable plan fiduciaries and certain other persons specified in the exemption (e.g., Department representatives or contributing employers), to determine whether the conditions of the exemption have been met.

EBSA previously submitted the information collection provisions of PTE 2002–12 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0115. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 91–38; Exemption for Certain Transactions Involving Bank Collective Investment Funds.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0082.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 3,600.

Responses: 3,600.

Estimated Total Burden Hours: 600.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 91–38 provides an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to an employee benefit plan. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code may prohibit transactions between the collective investment fund (CIF) and a party in interest to one or more of the employee benefit plans participating in the collective investment fund. Under PTE 91–38, a collective investment fund generally may engage in transactions with parties in interest to a plan that invests in the fund as long as the plan's total investment in the fund does not exceed a specified percentage of the total assets of the fund. The PTE also contains more limited or differently defined relief for funds holding more than the specified percentage, for multiemployer plans, and for transactions involving employer securities and employer real property. In order to ensure that the rights of participants and beneficiaries are protected, and that bank collective investment funds can demonstrate compliance with the terms of the exemption, the Department requires a bank to maintain records regarding the exempted transactions and make them available for inspection to specified interested persons (including the Department and the Internal Revenue Service) on request for a period of six years.

EBSA previously submitted the information collection provisions of PTE 91–38 to the Office of Management and Budget (OMB) for review in an ICR that was approved under the OMB Control No. 1210–0083. The current approval is scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 90–1—Pooled Separate Accounts.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0083.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 60.

Responses: 60.

Estimated Total Burden Hours: 100.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) relating to transactions involving insurance company pooled separate accounts in which employee benefit plans participate. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code might prohibit a party in interest to a plan from furnishing goods or services to an insurance company pooled separate account in which the plan has an interest, or prohibit engaging in other transactions. Under the exemption, persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, may engage in otherwise prohibited transactions with the separate account if the plan's participation in the separate account does not exceed specified limits and other conditions are met. These other conditions include a requirement that the party in interest not be the insurance company, or an affiliate thereof, that holds the plan assets in its pooled separate account or other separate account. The terms of the transaction to which the exemption is applied must be at least as favorable to the pooled separate account as those that would be obtained in a separate arms-length transaction with an unrelated party, and the insurance company must maintain records of any transaction to which the exemption applies for a period of six years. This ICR covers this recordkeeping requirement.

The Department previously submitted this information collection to the Office of Management and Budget (OMB) in an ICR that was approved under the OMB Control Number 1210–0083. The current approval is scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Foreign Exchange Transactions; PTE 94–20.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0085.

Affected Public: Individuals or households; Business or other for-profit; Not-for profit institutions.

Respondents: 279.

Responses: 1,395.

Estimated Total Burden Hours: 230.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank, broker-dealer, or an affiliate thereof, that is a trustee, custodian, fiduciary, or other party in interest with respect to the plan. The exemption is available provided that the transaction is directed (within the meaning of section IV(e) of the exemption) by a plan fiduciary that is independent of the bank, broker-dealer, or affiliate and all other conditions of the exemption are satisfied. Without this exemption, certain aspects of these transactions might be prohibited by section 406(a) of ERISA. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires that the party wishing to take advantage of the exemption (1) Develop written policies and procedures applicable to trading in foreign currencies on behalf of an employee

benefit plan; (2) provide a written confirmation with respect to each transaction in foreign currency to the independent plan fiduciary, disclosing specified information; and (3) maintain records pertaining to the transaction for a period of six years. This ICR relates to the foregoing disclosure and recordkeeping requirements.

EBSA previously submitted the information collection provisions of PTE 94–20 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0085. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 97–41, Collective Investment Funds Conversion Transactions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0104.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 50.

Responses: 105.

Estimated Total Burden Hours: 1,756.

Estimated Total Burden Cost (Operating and Maintenance): $310,000.

Description: Prohibited Transaction Exemption (PTE) 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits employee benefit plans to purchase shares of one or more open-end investment companies (funds) registered under the Investment Advisers Act of 1940 by transferring in-kind, to the investment company, assets of the plan that are part of a collective investment fund (CIF) maintained by a bank or plan advisor that is both a fiduciary of the plan and an investment advisor to the investment company offering the fund.

The exemption requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the mutual funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in PTE 97–41. These disclosures are the basis for this ICR.

EBSA previously submitted the information collection provisions of PTE 97–41 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0104. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Exemption 2004–07, Transactions with Trust REIT Shares.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0124.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 38.

Responses: 79,800.

Estimated Total Burden Hours: 3,990.

Estimated Total Burden Cost (Operating and Maintenance): $201,894.

Description: PTE 2004–07 exempts from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code), the acquisition, holding, sale, and contribution in kind of publicly traded shares of beneficial interest in a real estate investment trust that is structured under State law as a business trust (Trust REIT), on behalf of and to individual account plans sponsored by the REIT or its affiliates, provided that certain conditions are met.

The exemption allows individual account plans (Plans) established by Trust REITS to offer a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares, as defined in the exemption, to participants in Plans sponsored by the REIT or its employer affiliates, to require that employer contributions be used to purchase such shares, and to permit ''contributions in kind'' of such shares to these Plans by employers.

The exemption conditions relief on compliance with a number of information collection requirements. These information collections are to be provided or made available to plan participants and fiduciaries in order to inform them about investments in Qualifying REIT Shares and the conditions of the exemption permitting share transactions. Records sufficient to allow them to determine whether the exemption conditions are met must also be maintained, and made available to them upon request, for a period of six years. These records must also be made available on request to employers and employee organizations with employees and members covered by a Plan of the Trust REIT or one of its employer affiliates, and to authorized employees and representatives of the Department and the Internal Revenue Service. EBSA submitted an ICR for the information collections in PTE 2004–07 to the Office of Management and Budget (OMB) for review and clearance in connection with proposal of the class exemption, which was published in the **Federal Register** on June 3, 2003 (68 FR 33185). OMB approved the ICR under OMB control number 1210–0124. The ICR approval is currently scheduled to expire on August 31, 2012.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice of Research Exception Under The Genetic Information Nondiscrimination Act.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0136.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 3.

Responses: 3.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $10.

Description: The Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110–233, was enacted on May 21, 2008. Title I of GINA amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (Code), and the Social Security Act (SSA) to prohibit discrimination in health coverage based on genetic information. Sections 101 through 103 of Title I of GINA prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information, and from collecting such information. The interim final regulations, which are codified at 29 CFR 2590.702A, only interpret Sections 101 through 103 of Title I of GINA.

While GINA does not mandate any specific benefits for health care services related to genetic tests, diseases, conditions, or genetic services, GINA establishes rules that generally prohibit a group health plan and a health insurance issuer in the group market from:

• Increasing the group premium or contribution amounts based on genetic information;

• Requesting or requiring an individual or family member to undergo a genetic test; and

• Requesting, requiring or purchasing genetic information prior to or in connection with enrollment, or at any time for underwriting purposes.

GINA and the interim final regulations (29 CFR 2590.702A(c)(5)) provide a research exception to the limitations on requesting or requiring genetic testing that allow a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if all of the following conditions of the research exception are satisfied:

• The request must be made pursuant to research that complies with 45 CFR Part 46 (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of 45 CFR 46.116(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the participant is otherwise entitled, and the participant may discontinue participation at any time without penalty or loss of benefits to which the participant is entitled (the Participant Disclosure). The interim final regulations provide that when the Participant Disclosure is received by participants seeking their informed consent, no additional disclosures are required for purposes of the GINA research exception.

• The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.

• None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.

• The plan or issuer must complete a copy of the ''*Notice of Research Exception under the Genetic Information Nondiscrimination Act''* (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

The Participant Disclosure and the Notice are the information collection requests (ICRs) contained in the interim final rules. The Department previously requested review of this information collection and obtained approval from the Office of Management and Budget (OMB) under OMB control number 1210–0136. The ICR is scheduled to expire on August 31, 2012.

II. Focus of Comments

The Department is particularly interested in comments that:

• Evaluate whether the collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the collections of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: March 30, 2012.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2012–8206 Filed 4–4–12; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

Proposed Extension of Existing Collection; Comment Request; Correction

ACTION: Notice; Correction.

SUMMARY: The Department of Labor, Office of Workers' Compensation Programs is submitting a correction to the notice published in the **Federal Register** of February 9, 2012 (77 FR 6824). The document contained incorrect information.

FOR FURTHER INFORMATION CONTACT: Yoon Ferguson, 202–693–0701.

Corrections

1. In the **Federal Register** of February 9, 2012, in FR Doc. 2012–2997, on page 6824, in the first column, correct the ''Dates'' caption to read:

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 4, 2012.

2. In the **Federal Register** of February 9, 2012, in FR Doc. 2012–2997, on page 6824, in the second column, correct the ''Supplementary Information'' caption to read:

I. Background: The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA). These acts provide vocational rehabilitation services to eligible workers with disabilities. 5 U.S.C. 8111(b) of the FECA provides that OWCP may pay an individual undergoing vocational rehabilitation a maintenance allowance, not to exceed $200 a month. 33 U.S.C. 908(g) of the LHWCA provides that person(s) undergoing such vocational rehabilitation shall receive maintenance allowances as additional compensation, not to exceed $25 a week. Form OWCP–17 is used to collect information necessary to decide the amount of any maintenance allowance to be paid. This information collection is currently approved for use through June 30, 2012.

II. Review Focus: The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions: The Department of Labor seeks the approval for the extension of this currently approved information collection in order to carry out its responsibility to assure payment

of compensation benefits to injured workers at the proper rate.

Type of Review: Extension.

Agency: Office of Workers' Compensation Programs.

Title: Rehabilitation Maintenance Certificate.

OMB Number: 1240–0012.

Agency Number: OWCP–17.

Affected Public: Individuals or households.

Total Respondents: 603.

Total Annual Responses: 5,022.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 837.

Total Burden Cost (operating/maintenance): $2,411.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 2, 2012.

Vincent Alvarez,

Agency Clearance Officer, Office of Workers' Compensation Programs, U.S. Department of Labor.

[FR Doc. 2012–8223 Filed 4–4–12; 8:45 am]

BILLING CODE 4510–CR–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 7, 2012. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR), 8601 Adelphi Road, College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, National Records Management Program (ACNR), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1799. Email: *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Rural Development (N1–572–10–1, 2 items, 2 temporary items). Agency Web site records, including site management and non-unique Web content records.

2. Department of Defense, Defense Contract Management Agency (N1–558–10–10, 11 items, 11 temporary items). Contract management records, including pre-award surveys, contract files, cost control reviews, discrepancy reports, bills of lading, and electronic databases.

3. Department of Homeland Security, U.S. Citizenship and Immigration Services (N1–566–12–1, 2 items, 2 temporary items). Master files of an electronic information system used to track genealogical requests for searches and copies of documents.

4. Department of Homeland Security, Transportation Security Administration (N1–560–11–7, 3 items, 3 temporary items). Records relating to the sensitive security information program, including procedures, guidance, correspondence, tracking and management reports,

determination case files, memos, and forms.

5. Department of Justice, Criminal Division (DAA–0060–2011–0010, 1 item, 1 temporary items). Master files of an electronic information system used to track correspondence and administrative material.

6. Department of Justice, Justice Management Division (DAA–0060–2011–0002, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to report on performance metrics.

7. Department of Justice, Office of Community Oriented Policing Services (DAA–0060–2011–0004, 1 item, 1 temporary item). Master files of an electronic information system used to track financial reports for federal grants.

8. Department of Transportation, Federal Railroad Administration (N1–399–08–11, 4 items, 3 temporary items). Inputs and outputs of an electronic information system containing source data and data exports created for specific requests on activities and events related to the rail network. Proposed for permanent retention are master files containing geographic information on the railroad network and mileposts.

9. Department of the Treasury, Internal Revenue Service (N1–58–11–3, 3 items, 3 temporary items). Master files, audit data, and documentation for an electronic information system used to control and track bank adjustment inventories.

10. Social Security Administration, Office of Earnings, Enumeration, and Administrative Systems (N1–47–09–2, 2 items, 1 temporary item). Master files of an electronic information system used to facilitate and manage the application and assignment of social security numbers. Proposed for permanent retention is a system output that includes biographical data on all social security card holders.

Dated: March 29, 2012.

Paul M. Wester, Jr.,

Chief Records Officer for the U.S. Government.

[FR Doc. 2012–8174 Filed 4–4–12; 8:45 am]

BILLING CODE 7515–01–P

POSTAL REGULATORY COMMISSION

[Docket No. R2012–7; Order No. 1302]

Postal Service Classification and Price Adjustments

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service notice announcing its intent to implement Picture Permit Imprint Indicia as priced categories for First-Class Mail and Standard Mail letters and cards. This notice addresses procedural steps associated with this filing.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

DATES: *Comments are due:* April 17, 2012.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On March 28, 2012, the Postal Service filed a notice with the Commission announcing its intent to implement Picture Permit Imprint Indicia as price categories for First-Class Mail and Standard Mail letters and cards pursuant to 39 U.S.C. 3622 and 39 CFR 3010.[1] The classification and price adjustment will permit certain images, such as corporate or product logos, to be placed in the permit indicia area of First-Class and Standard Mail letters and cards (Adjustment). *Id.* at 2. The adjustment is proposed to take effect at 12:01 a.m. on June 24, 2012. *Id.* at 1.

II. Postal Service Filing

Picture Permit Imprint Indicia category. The Postal Service plans to implement Picture Permit Imprint Indicia as a price category for First-Class Mail and Standard Mail letters and cards. *Id.* at 2. The Postal Service states that, in response to customer requests to use corporate or product logos in this area of the envelope, it has developed guidelines, requirements, and other specifications for the use of images on the permit indicia area of the mailpiece. *Id.* It asserts that the Picture Permit Imprint Indicia is an innovative use for the permit indicia space that affords prospective customers the opportunity and ability to brand and advertise their products and services on the mailpiece. *Id.* It states that such mailpieces have been tested in the mailstream, and it believes that limited use of the permit indicia space of the mailpiece should be permitted at an appropriate price. *Id.* at 3.

The Postal Service states that the Adjustment is designed to help keep mailers using the mail, increase the interest of mail recipients in the mail they receive, and generate higher revenue through a per-piece charge over and above postage. *Id.* Market research by the Postal Service indicates that most mailers would use Picture Permit imprints for existing volume, although some said that they would increase their mailing volume. *Id.* Nine percent of First-Class Mail commercial customers and 12 percent of Standard Mail customers responded that they would be willing to pay a small premium to use Picture Permit imprints. *Id.* The Postal Service will charge an additional one cent per piece for First-Class Mail and two cents per piece for Standard Mail for the use of Picture Permit imprints. *Id.* It will require all mailings to be Full-Service Intelligent Mail barcodes, with each Picture Permit imprint to be approved by the Postal Service. *Id.* Mail customers will be responsible to defend against all legal charges for use of the image. *Id.*

Impact on the price cap. The Postal Service states that the planned prices have no impact on price cap issues because they do not change the prices for any existing First-Class Mail or Standard Mail price categories. *Id.* Therefore, it made no cap or price change calculations as described in rules 3010.14(b)(1) through (4). *Id.*

Objectives and factors, workshare discounts, and preferred rates. The Postal Service lists the relevant objectives and factors of 39 U.S.C. 3622, and claims the Adjustment does not substantially alter the degree to which First-Class Mail and Standard Mail prices already address the objectives and factors. *Id.* at 4–8. In particular, the Postal Service contends that the Adjustment is an example of the increased pricing flexibility under the Postal Accountability and Enhancement Act (objective 4), and will encourage new mail volumes, which will have the effect of enhancing the financial position of the Postal Service (objective 5). *Id.* at 7, 8. Similarly, the Postal Service claims that the Adjustment

[1] United States Postal Service Notice of Market Dominant Classification and Price Changes for Picture Permit Imprint Indicia, March 28, 2012 (Notice).

encourages increased mail volume (factor 7) and, by charging for an attractive new option that does not increase the Postal Service costs significantly, will help First-Class and Standard Mail cover attributable costs (factor 2). *Id.*

Workshare discounts. According to the Postal Service, the Adjustment will not impact current workshare discounts. *Id.* at 8.

Preferred rates. The same prices for Picture Permit Imprints will apply to Nonprofit pieces entered as Standard Mail High Density and Saturation Letters, Carrier Route, and Letters. *Id.* Based on the limited volumes expected to use this price category, the Postal Service expects that the ratio between nonprofit and commercial prices will remain close to 60 percent, thus meeting the statutory requirement in 39 U.S.C. 3626(a)(6).

Mail Classification Schedule (MCS). The Postal Service provides proposed MCS language in Appendix A of its Notice.

III. Commission Action

The Commission establishes Docket No. R2012–7 to consider all matters related to the Notice. The Commission's rules provide for a 20-day comment period starting from the date of the filing of the Notice. *See* 39 CFR 3010.13(a)(5). Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010. Comments are due no later than April 17, 2012.

The Commission appoints Katalin K. Clendenin to represent the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2012–7 to consider matters raised by the Postal Service's March 28, 2012 Notice.

2. Interested persons may submit comments on the planned price category implementation. Comments are due no later than April 17, 2012.

3. Pursuant to 39 U.S.C. 505, Katalin K. Clendenin is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. The Secretary shall arrange for publication of this notice in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2012–8161 Filed 4–4–12; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66697; File No. SR–Phlx–2012–39]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Non-Display of Primary Pegged Orders With an Offset Amount

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2012, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide amend Exchange Rule 3301(f)(4) to provide for non-display of Primary Pegged Orders with an offset amount. The text of the proposed rule change is available at: *http://www.nasdaqtrader.com/micro.aspx?id=PHLXRulefilings*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend Rule 3301(f)(4) to provide that Primary Pegged Orders with an offset amount will be non-displayed, a change that will improve system and inter-market price stability. Pegged Orders are orders that, once entered, adjust in price automatically, in response to changes in the inside bids or offers of NASDAQ OMX PSX (''PSX'')[4] or the national market system, depending upon the type of Pegged Order. A Primary Pegged Order specifies that its price will equal the inside quote on the same side of the market; a Market Pegged Order will equal the inside quote on the opposite side of the market. A Midpoint Peg Order will equal the midpoint of the national best bid and offer (''NBBO''), excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. As the bids and offers change, so move the Pegged Orders. A Pegged Order may have a limit price beyond which the order shall not be executed. Primary Peg and Market Peg Orders may establish their pricing relative to the appropriate bids or offers by selecting one or more offset amounts that will adjust the price of the order by the offset amount selected.

Under the Exchange's current rule, Midpoint Pegged Orders are not displayed, while Primary and Market Pegged Orders may be displayed or not displayed, at the option of the person placing the order. The display of Primary Pegs with an offset amount can potentially result in excessive messaging when multiple venues display Pegged non-marketable Orders. In these scenarios, it is possible for the Primary Pegged Orders on each venue to react to and change in relation to each other, resulting in excessive messaging and ''quote flickering.'' A rule change to eliminate display of Primary Pegged Orders with an offset amount will prevent this feedback loop, adding to system stability and improving market quality.

Market participants retain the ability to display orders through other order options available under the Exchange rules, including by using Primary Pegged Orders without an offset amount or Market Pegged Orders. Because Primary Pegged Orders without an offset amount are priced at the inside quote, they do not present the same messaging

[4] PSX is the Exchange's cash equities market electronic trading platform.

problem. Rapid updates to displayed Primary Pegged Orders may still occur, but are more likely to be the result of rapid trading. Market Pegged Orders, in contrast to Primary Pegs with an offset amount, are typically priced to execute and rarely post, and thus also do not present the excessive messaging problem.

The Commission approved the non-display of Pegged Orders when it approved the application of BATS Exchange, Inc. (''BATS''), for registration as a national securities exchange and found BATS' proposed rules consistent with Section 6 of the Act.[5] BATS Rule 11.9(c)(8) provides that Pegged Orders ''are not displayed on the Exchange.'' [6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Non-display of Primary Pegged Orders with an offset amount will minimize excess messaging that distracts from, rather than improves transparency and stability. Market participants can elect to display orders by using other available order types. The Exchange believes that the proposed change to Rule 3301(f)(4) meets the requirements of Section 6(b)(5) of the Act [9] in that it will improve the stability, quality and transparency of the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that providing for non-display of Primary Pegged Orders will not burden competition since at least one other exchange currently offers the same attribute for pegged orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2012–39 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2012–39. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2012–39 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8168 Filed 4–4–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66699; File No. SR–NASDAQ–2012–041]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Non-Display of Primary Pegged Orders With an Offset Amount

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

[5] *See* Securities Exchange Act Release No. 58375 (August 18, 2008) 73 FR 49498 (August 21, 2008); *see also* Securities Exchange Act Release No. 57322 (February 13, 2008), 73 FR 9370 (February 20, 2008).

[6] *BATS* Rule 11.9(c)(8).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to provide that Primary Pegged Orders with an offset amount will never be displayed. The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to amend Rule 4751(f)(4) to provide that Primary Pegged Orders with an offset amount will be non-displayed, a change that will improve system and inter-market price stability. Pegged Orders are orders that, once entered, adjust in price automatically, in response to changes in the inside bids or offers of the Nasdaq Market Center or the national market system, depending upon the type of Pegged Order. A Primary Pegged Order specifies that its price will equal the inside quote on the same side of the market; a Market Pegged Order will equal the inside quote on the opposite side of the market. A Midpoint Peg Order will equal the midpoint of the national best bid and offer (''NBBO''), excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. As the bids and offers change, so move the Pegged Orders. A Pegged Order may have a limit price beyond which the order shall not be executed. Primary Peg and Market Peg Orders may establish their pricing relative to the appropriate bids or offers by selecting one or more offset amounts that will adjust the price of the order by the offset amount selected.

Under the Exchange's current rule, Midpoint Pegged Orders are not displayed, while Primary and Market Pegged Orders may be displayed or not displayed, at the option of the person placing the order. The display of Primary Pegs with an offset amount can potentially result in excessive messaging when multiple venues display Pegged non-marketable Orders. In these scenarios, it is possible for the Primary Pegged Orders on each venue to react to and change in relation to each other, resulting in excessive messaging and ''quote flickering''. A rule change to eliminate display of Primary Pegged Orders with an offset amount will prevent this feedback loop, adding to system stability and improving market quality.

Market participants retain the ability to display orders through other order options available under the Exchange rules, including by using Primary Pegged Orders without an offset amount or Market Pegged Orders. Because Primary Pegged Orders without an offset amount are priced at the inside quote, they do not present the same messaging problem. Rapid updates to displayed Primary Pegged Orders may still occur, but are more likely to be the result of rapid trading. Market Pegged Orders, in contrast to Primary Pegs with an offset amount, are typically priced to execute and rarely post, and thus also do not present the excessive messaging problem.

The Commission approved the non-display of Pegged Orders when it approved the application of BATS Exchange, Inc. (''BATS''), for registration as a national securities exchange and found BATS' proposed rules consistent with Section 6 of the Act.[4] BATS Rule 11.9(c)(8) provides that Pegged Orders ''are not displayed on the Exchange.'' [5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Non-display of Primary Pegged Orders with an offset amount will minimize excess messaging that distracts from, rather than improves transparency and stability. Market participants can elect to display orders by using other available order types. The Exchange believes that the proposed change to Rule 4751(f)(4) meets the requirements of Section 6(b)(5) of the Act [8] in that it will improve the stability, quality and transparency of the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. Specifically, the Exchange believes that providing for non-display of Primary Pegged Orders will not burden competition since at least one other exchange currently offers the same attribute for pegged orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder in that the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 58375 (August 18, 2008) 73 FR 49498 (August 21, 2008) (File No. 10–182); *see also* Securities Exchange Act Release No. 57322 (February 13, 2008), 73 FR 9370 (February 20, 2008) (File No. 10–182).

[5] BATS Rule 11.9(c)(8).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. NASDAQ believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it adopts a provision that is already in effect on another market; will operate to minimize excessive messaging and therefore maximize system and inter-market stability; and is an order type that participants may elect to use but are not mandated to use.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–041 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–041. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2012–041 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8150 Filed 4–4–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66696; File No. SR–NYSEArca–2012–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of AdvisorShares Global Echo ETF Under NYSE Arca Equities Rule 8.600

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 16, 2012, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): AdvisorShares Global Echo ETF. The text of the proposed rule change is available at the Exchange, *www.nyse.com,* and the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade shares (''Shares'') of the following under NYSE Arca Equities Rule 8.600, which governs the listing and trading of Managed Fund Shares: [3] AdvisorShares Global Echo ETF (''Fund'').[4] The Shares

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Managed Fund Share is a security that represents an interest in an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1) (''1940 Act'') organized as an open-end investment company or similar entity that invests in a portfolio of securities selected by its investment adviser consistent with its investment objectives and policies. In contrast, an open-end investment company that issues Investment Company Units, listed and traded on the Exchange under NYSE Arca Equities Rule 5.2(j)(3), seeks to provide investment results that correspond generally to the price and yield performance of a specific foreign or domestic stock index, fixed income securities index or combination thereof.

[4] The Commission has previously approved listing and trading on the Exchange of a number of actively managed funds under Rule 8.600. *See, e.g.,* Securities Exchange Act Release Nos. 57801 (May 8, 2008), 73 FR 27878 (May 14, 2008) (SR–NYSEArca–2008–31) (order approving Exchange listing and trading of twelve actively-managed funds of the WisdomTree Trust); 60460 (August 7, 2009), 74 FR 41468 (August 17, 2009) (SR–NYSEArca–2009–55) (order approving listing of Dent Tactical ETF); 63076 (October 12, 2010), 75 FR 63874 (October 18, 2010) (SR–NYSEArca–2010–79) (order approving Exchange listing and trading of Cambria Global Tactical ETF); 63802 (January 31, 2011), 76 FR 6503 (February 4, 2011) (SR–NYSEArca–2010–118) (order approving Exchange listing and trading of the SiM Dynamic Allocation

will be offered by AdvisorShares Trust (''Trust''), a statutory trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.[5] The investment adviser to the Fund is AdvisorShares Investments, LLC (''Adviser''). The Fund's sub-advisers (''Sub-Advisers'' and each a ''Sub-Adviser''), which provide day-to-day portfolio management of the Fund, are First Affirmative Financial Network LLC; Reynders, McVeigh Capital Management, LLC; Baldwin Brothers Inc.; and Community Capital Management Inc.

Foreside Fund Services, LLC (''Distributor'') is the principal underwriter and distributor of the Fund's Shares. The Bank of New York Mellon Corporation serves as the administrator (''Administrator''), custodian, transfer agent, and fund accounting agent for the Fund.

Commentary .06 to Rule 8.600 provides that, if the investment adviser to the investment company issuing Managed Fund Shares is affiliated with a broker-dealer, such investment adviser shall erect a ''fire wall'' between the investment adviser and the broker-dealer with respect to access to information concerning the composition and/or changes to such investment company portfolio.[6] In addition, Commentary .06 further requires that personnel who make decisions on the open-end fund's portfolio composition must be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the open-end fund's portfolio. Commentary .06 to Rule 8.600 is similar to Commentary .03(a)(i) and (iii) to NYSE Arca Equities Rule 5.2(j)(3); however, Commentary .06 in connection with the establishment of a ''fire wall'' between the investment adviser and the broker-dealer reflects the applicable open-end fund's portfolio, not an underlying benchmark index, as is the case with index-based funds. Neither the Adviser nor the Sub-Advisers are affiliated with a broker-dealer. In the event (a) the Adviser or the Sub-Advisers become newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser becomes affiliated with a broker-dealer, it will implement a fire wall with respect to such broker-dealer regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

Description of the Fund

According to the Registration Statement, the Fund will seek to achieve long-term capital appreciation with an emphasis on absolute (positive) returns and low sensitivity to traditional financial market indices, such as the S&P 500 Index, over a full market cycle. The Fund will seek to achieve its investment objective by investing under normal market circumstances[7] at least 80% of its total assets in the following securities: U.S. exchange-listed equity securities;[8] American Depository Receipts (''ADRs'');[9] fixed income securities (including municipal bonds); and exchange-traded products (''Underlying ETPs'')[10] that provide diversified exposure to various asset classes and market segments.

The Fund will be a multi-manager, multi-strategy, broadly diversified, actively managed exchange-traded fund with a focus on ''Sustainable Investing.'' Sustainable Investing generally refers to an investment methodology that takes into consideration economic, environmental, technology, and a variety of social factors when making investment decisions. Accordingly, the Fund is designed as a core allocation that proactively seeks Sustainable Investment-themed investment opportunities that may socially and environmentally benefit the earth, with a focus on water, clean energy, community development, innovation, and other sustainable themes across asset classes. Sustainable Investment themes that the Fund may pursue include, but are not limited to, the following: economic themes (corporate governance, risk and crisis management, community investment, energy efficiency, food, green building); environmental themes (air, water, earth); technology themes (mobility, renewable energy, technology, and access); and social themes (human health, such as occupational health and safety).

The Fund will seek to achieve its investment objective by allocating a portion of the Fund's assets to each of the Fund's Sub-Advisers who will employ their respective investment

Diversified Income ETF and SiM Dynamic Allocation Growth Income ETF).

[5] The Trust is registered under the 1940 Act. On July 15, 2011, the Trust filed with the Commission Post-Effective Amendment No. 32 to Form N–1A under the Securities Act of 1933 (15 U.S.C. 77a), and under the 1940 Act relating to the Fund (File Nos. 333–157876 and 811–22110) (''Registration Statement''). The description of the operation of the Trust and the Fund herein is based, in part, on the Registration Statement. In addition, the Commission has issued an order granting certain exemptive relief to the Trust under the 1940 Act. *See* Investment Company Act Release No. 29291 (May 28, 2010) (File No. 812–13677) (''Exemptive Order'').

[6] An investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 (''Advisers Act''). As a result, the Adviser and Sub-Advisers and their related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) Adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[7] The term ''under normal market circumstances'' includes, but is not limited to, the absence of extreme volatility or trading halts in the equities or fixed income markets or the financial markets generally; operational issues causing dissemination of inaccurate market information; or force majeure type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption or any similar intervening circumstance.

[8] The Fund may invest in equity securities of domestic and foreign companies, including common stocks, preferred stocks, warrants to acquire common stock, securities convertible into common stock, and investments in master limited partnerships.

[9] The Fund generally will invest in sponsored ADRs, but it may invest up to 10% of total assets in unsponsored ADRs.

[10] Underlying ETPs include Investment Company Units (as described in NYSE Arca Equities Rule 5.2(j)(3)); Index-Linked Securities (as described in NYSE Arca Equities Rule 5.2(j)(6)); Portfolio Depositary Receipts (as described in NYSE Arca Equities Rule 8.100); Trust Issued Receipts (as described in NYSE Arca Equities Rule 8.200); Commodity-Based Trust Shares (as described in NYSE Arca Equities Rule 8.201); Currency Trust Shares (as described in NYSE Arca Equities Rule 8.202); Commodity Index Trust Shares (as described in NYSE Arca Equities Rule 8.203); Trust Units (as described in NYSE Arca Equities Rule 8.500); Managed Fund Shares (as described in NYSE Arca Equities Rule 8.600); and closed-end funds. The Underlying ETPs all will be listed and traded in the U.S. on registered exchanges. The Fund may invest in the securities of Underlying ETPs registered under the 1940 Act consistent with the requirements of Section 12(d)(1) of the 1940 Act, or any rule, regulation, or order of the Commission or interpretation thereof. The Fund will only make such investments in conformity with the requirements of Section 817 of the Internal Revenue Code of 1986. The Underlying ETPs in which the Fund may invest will primarily be index-based exchange-traded funds that hold substantially all of their assets in securities representing a specific index.

strategies to generate absolute returns over a full market cycle. Generally, a full market cycle consists of a bull market followed by a bear market and a return to a bull market, or vice versa. Initially, an equal proportion of the Fund's assets will be allocated to each Sub-Adviser to obtain the desired exposure to the strategies described below. The allocation among Sub-Advisers will vary over time in response to a variety of factors including prevailing market conditions. The Adviser has designated First Affirmative Financial Network, LLC to allocate and monitor the allocation of the Fund's assets to each Sub-Adviser to ensure that the Fund's portfolio maintains the proper investment exposure to seek to achieve its investment objective. Each Sub-Adviser will seek to identify and invest either directly or indirectly through other Underlying ETPs in securities of companies that are making a positive impact in the world and reflect Sustainable Investment themes, including corporate sustainability. The Fund's investments in companies that practice corporate sustainability will provide an additional layer of diversification because such investments are designed to increase long-term shareholder value. Companies focused on corporate sustainability also can provide more attractive risk return profiles for investors, and can leverage various other Sustainable Investment themes.

The Fund may take both long and short positions in any of these investments. The Fund may invest up to 65% (and intends to always invest at least 15%) of its net assets in domestic and foreign fixed income securities. The Fund may invest in securities of any capitalization range and may employ one or more investment styles (from growth to value) at any time as necessary to seek to achieve the Fund's investment objective.

Each Sub-Adviser will determine whether to buy or sell an investment for the Fund's portfolio by applying one or more of the following strategies:

Core Strategies

○ *Fixed Income Strategies.* Fixed income strategies consist of investment strategies that invest primarily in debt securities of domestic and foreign governments, agencies, instrumentalities, municipalities and companies of all maturities and qualities (including ''junk bonds'' and up to 15% of total assets in defaulted debt securities), TIPS (Treasury Inflation Protected Securities), and Underlying ETPs that provide exposure to fixed income securities or strategies. 85% or more of the Fund's investments in fixed income strategies will be in investment grade debt securities. Debt securities of foreign governments are sometimes referred to as sovereign debt obligations and may be issued or guaranteed by foreign governments or their agencies. The Fund may invest up to 10% of total assets in mortgage-backed securities or other asset-backed securities.[11] Fixed income strategies also may involve hedging through the use of investments in other Underlying ETPs to enhance risk-adjusted return.

○ *Equity Strategies.* Equity strategies will consist of both domestic and international/emerging markets strategies. The domestic equity strategies will seek to invest in securities of companies that the Sub-Advisers believe will outperform other equity securities over the long term.[12] The international/emerging markets equity strategies will seek to invest in securities of undervalued international companies through ADRs that provide the Fund with exposure to businesses outside of the U.S. and that are attractively priced relative to their economic fundamentals. Both U.S. and international investments will be selected using fundamental analysis of factors such as earnings, cash flows, and valuations based upon them, and will be diversified among the economic and industry sectors in the S&P 500® Index, the Morgan Stanley Capital International (''MSCI'') All Country World Index, MSCI Europe, Australasia and Far East Index, and MSCI Emerging Markets Index.

Alternative Strategies

○ *Long/Short and Hedging Strategies.* Alternative strategies will consist of strategies that combine short sales of equities (including shares of Underlying ETPs) or purchase of shares of inverse Underlying ETPs. As such, long/short strategies may utilize securities that seek to track indexes on markets, sectors, strategies, and/or industries to hedge against potential adverse movements in security prices. The Fund may implement multiple variations of long/short and hedging strategies. The basic long/short equity strategies generally will seek to increase net long exposure in a bull market and decrease net long exposure, by holding high concentrations in cash or investing 100% short in a bear market.

Other Investments

The Fund may enter into repurchase agreements with financial institutions, which may be deemed to be loans. The Fund will follow certain procedures designed to minimize the risks inherent in such agreements. These procedures will include effecting repurchase transactions only with large, well-capitalized, and well-established financial institutions whose condition will be continually monitored by the Sub-Advisers. In addition, the value of the collateral underlying the repurchase agreement will always be at least equal to the repurchase price, including any accrued interest earned on the repurchase agreement. The Fund may enter into reverse repurchase agreements without limit as part of the Fund's investment strategy. Reverse repurchase agreements involve sales by the Fund of portfolio assets concurrently with an agreement by the Fund to repurchase the same assets at a later date at a fixed price.

The Fund, or Underlying ETPs in which it invests, may invest in U.S. government securities and U.S. Treasury zero-coupon bonds. The Fund, or Underlying ETPs in which it invests, may invest in shares of real estate investment trusts (''REITs'').

Diversification. The Fund may not (i) with respect to 75% of its total assets, purchase securities of any issuer (except securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities or shares of investment companies) if, as a result, more than 5% of its total assets would be invested in the securities of such issuer; or (ii) acquire more than 10% of the outstanding voting securities of any one issuer.[13]

Concentration. The Fund may not invest 25% or more of its total assets in the securities of one or more issuers conducting their principal business activities in the same industry or group of industries. This limitation does not apply to investments in securities issued or guaranteed by the U.S. Government, its agencies or instrumentalities, or shares of investment companies. The Fund will not invest 25% or more of its total assets

[11] This limitation does not apply to securities issued or guaranteed by federal agencies and/or U.S. government sponsored instrumentalities, such as the Government National Mortgage Administration (''GNMA''), the Federal Housing Administration (''FHA''), the Federal National Mortgage Association (''FNMA''), and the Federal Home Loan Mortgage Corporation (''FHLMC'').

[12] Telephone conference between Michael Cavalier, Chief Counsel, NYSE Euronext and Kristie Diemer, Special Counsel, Division of Trading and Markets, Commission, on March 28, 2012, confirmed domestic equities strategies will apply to all Sub-Advisers.

[13] The diversification standard is set forth in Section 5(b)(1) of the 1940 Act.

in any investment company that so concentrates.[14]

The Fund will not purchase illiquid securities.[15] Further, in accordance with the Exemptive Order, the Fund will not invest in options, futures, or swaps. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage.

Except for Underlying ETPs that may hold non-U.S. issues, the Fund will not otherwise invest in non-U.S. issues.

To respond to adverse market, economic, political, or other conditions, the Fund may invest 100% of its total assets, without limitation, in high-quality debt securities and money market instruments either directly or through Underlying ETPs. The Fund may be invested in these instruments for extended periods, depending on the Sub-Advisers' assessment of market conditions. These debt securities and money market instruments include shares of other mutual funds, commercial paper, certificates of deposit, bankers' acceptances, U.S. Government securities, repurchase agreements, and bonds that are BBB or higher. While the Fund is in a defensive position, the opportunity to achieve its investment objective will be limited.

Creations and Redemptions

The Fund will issue and redeem Shares on a continuous basis at the net asset value (''NAV'') only in a large specified number of shares called a ''Creation Unit.'' The Shares are ''created'' at their NAV by market makers, large investors, and institutions only in block-size Creation Units of at least 50,000 Shares. A ''creator'' will enter into an authorized participant agreement (''Participant Agreement'') with the Distributor or use a Depository Trust Company (''DTC'') participant who has executed a Participant Agreement (''Authorized Participant''), and deposit into the Fund a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, together totaling the NAV of the Creation Unit(s), in exchange for 50,000 Shares of the Fund (or multiples thereof).

Shares may be redeemed only in Creation Units at their NAV next determined after receipt of a redemption request in proper form by a Fund through the Administrator and only on a business day. The redemption proceeds for a Creation Unit generally will consist of a portfolio of securities closely approximating the holdings of the Fund and a specified amount of cash, as announced by the Administrator on the business day of the request for redemption received in proper form, plus cash in an amount equal to the difference between the NAV of the Shares being redeemed, as next determined after a receipt of a request in proper form, and the value of such portfolio of securities. Orders to create and redeem Shares must be placed with the Administrator by 3 p.m., Eastern Time (''E.T.'').

Net Asset Value

The NAV per Share of the Fund will be computed by dividing the value of the net assets of the Fund (*i.e.,* the value of its total assets less total liabilities) by the total number of Shares of the Fund outstanding, rounded to the nearest cent. Expenses and fees, including without limitation, the management, administration, and distribution fees, will be accrued daily and taken into account for purposes of determining NAV. The NAV per Share for the Fund will be calculated by the Administrator and determined as of the close of the regular trading session on the New York Stock Exchange (''NYSE'') (ordinarily 4 p.m., E.T.) on each day that the NYSE is open.

In computing the Fund's NAV, the Fund's securities holdings will be valued based on their last readily available market price. Price information on listed securities, including Underlying ETPs, will be taken from the exchange where the security is primarily traded. Securities regularly traded in an over-the-counter market will be valued at the latest quoted sales price on the primary exchange or national securities market on which such securities are traded. Securities not listed on an exchange or national securities market, or securities in which there was no last reported sales price, will be valued at the most recent bid price. Other portfolio securities and assets for which market quotations are not readily available will be valued based on fair value as determined in good faith by the Sub-Advisers in accordance with procedures adopted by the Fund's Board of Trustees.

The Shares will conform to the initial and continued listing criteria under NYSE Arca Equities Rule 8.600. The Exchange represents that, for initial and/or continued listing, the Fund will be in compliance with Rule 10A–3 under the Exchange Act,[16] as provided by NYSE Arca Equities Rule 5.3. A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange. The Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time.

Availability of Information

The Fund's Web site (*www.advisorshares.com*), which will be publicly available prior to the public offering of Shares, will include a form of the prospectus for the Fund that may be downloaded. The Fund's Web site will include additional quantitative information updated on a daily basis, including, for the Fund, (1) daily trading volume, the prior business day's reported closing price, NAV and mid-point of the bid/ask spread at the time of calculation of such NAV (''Bid/Ask Price''),[17] and a calculation of the premium and discount of the Bid/Ask Price against the NAV, and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio as defined in NYSE Arca Equities Rule 8.600(c)(2) that will form the basis for the Fund's calculation of NAV at the end of the business day.[18]

On a daily basis, the Adviser will disclose on the Fund's Web site for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares

[14] *See* Form N–1A, Item 9. The Commission has taken the position that a fund is concentrated if it invests more than 25% of the value of its total assets in any one industry. *See, e.g.,* Investment Company Act Release No. 9011 (October 30, 1975), 40 FR 54241 (November 21, 1975).

[15] A fund's portfolio security is illiquid if it cannot be disposed of in the ordinary course of business within seven days at approximately the value ascribed to it by the fund. *See* Investment Company Act Release No. 14983 (March 12, 1986), 51 FR 9773 (March 21, 1986) (adopting amendments to Rule 2a–7 under the 1940 Act); Investment Company Act Release No. 17452 (April 23, 1990), 55 FR 17933 (April 30, 1990) (adopting Rule 144A under the Securities Act of 1933).

[16] 17 CFR 240.10A–3.

[17] The Bid/Ask Price of the Fund is determined using the mid-point of the highest bid and the lowest offer on the Exchange as of the time of calculation of the Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Fund and its service providers.

[18] Under accounting procedures followed by the Fund, trades made on the prior business day (''T'') will be booked and reflected in NAV on the current business day (''T+1''). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

or dollar value of other securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site information will be publicly available at no charge.

In addition, a basket composition file, which includes the security names and share quantities required to be delivered in exchange for Fund Shares, together with estimates and actual cash components, will be publicly disseminated daily prior to the opening of the NYSE via the National Securities Clearing Corporation. The basket represents one Creation Unit of the Fund.

Investors can also obtain the Trust's Statement of Additional Information (''SAI''), the Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site at *www.sec.gov*. Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Price information for the ADRs, debt and equity securities held by the Fund, including foreign equity securities, and Underlying ETPs will be available through major market data vendors or securities exchanges listing and trading such securities. Quotation and last-sale information for the Shares will be available via the Consolidated Tape Association (''CTA'') high-speed line. In addition, the Portfolio Indicative Value, as defined in NYSE Arca Equities Rule 8.600(c)(3), will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session.[19] The dissemination of the Portfolio Indicative Value, together with the Disclosed Portfolio, will allow investors to determine the value of the underlying portfolio of the Fund on a daily basis and will provide a close estimate of that value throughout the trading day.

Additional information regarding the Trust and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, distributions, and taxes is included in the Registration Statement. All terms relating to the Fund that are referred to, but not defined in, this proposed rule change are defined in the Registration Statement.

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund.[20] Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities and/or the financial instruments comprising the Disclosed Portfolio of the Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. Shares will trade on the NYSE Arca Marketplace from 4 a.m. to 8 p.m., E.T. in accordance with NYSE Arca Equities Rule 7.34 (Opening, Core, and Late Trading Sessions). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Equities Rule 7.6, Commentary .03, the minimum price variation (''MPV'') for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is $0.01, with the exception of securities that are priced less than $1.00 for which the MPV for order entry is $0.0001.

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (which include Managed Fund Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.[21] All equity securities, Underlying ETPs, and sponsored ADRs held by the Fund will be listed on securities exchanges, all of which are members of ISG.

In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its Equity Trading Permit (''ETP'') Holders in an Information Bulletin (''Bulletin'') of the special characteristics and risks associated with trading the Shares. Specifically, the Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Creation Unit aggregations (and that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) the risks involved in trading the Shares during the Opening and Late Trading Sessions when an updated Portfolio Indicative Value will not be calculated or publicly disseminated; (4) how information regarding the Portfolio Indicative Value is disseminated; (5) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information.

In addition, the Bulletin will reference that the Fund is subject to various fees and expenses described in the Registration Statement. The Bulletin will discuss any exemptive, no-action, and interpretive relief granted by the

[19] Currently, it is the Exchange's understanding that several major market data vendors display and/or make widely available Portfolio Indicative Values published on CTA or other data feeds.

[20] *See* NYSE Arca Equities Rule 7.12, Commentary .04.

[21] For a list of the current members of ISG, see *www.isgportal.org.* The Exchange notes that not all components of the Disclosed Portfolio for the Fund may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

Commission from any rules under the Exchange Act. The Bulletin will also disclose that the NAV for the Shares will be calculated after 4 p.m., E.T. each trading day.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) [22] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Equities Rule 8.600. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. Price information for the ADRs, debt and equity securities held by the Fund, including foreign equity securities, and Underlying ETPs will be available through major market data vendors or securities exchanges listing and trading such securities. All equity securities, Underlying ETPs, and sponsored ADRs held by the Fund are listed on securities exchanges, all of which are members of ISG. The listing and trading of such securities is subject to rules of the exchanges on which they are listed and traded, as approved by the Commission. The Fund will not purchase illiquid securities. Further, the Fund will not invest in options, futures, or swaps. The Fund's investments will be consistent with the Fund's investment objective and will not be used to enhance leverage. Except for Underlying ETPs that may hold non-U.S. issues and for ADRs, the Fund will not otherwise invest in non-U.S. issues.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that the Exchange will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. In addition, a large amount of information is publicly available regarding the Fund and the Shares, thereby promoting market transparency. Quotation and last-sale information for the Shares will be available via the CTA high-speed line. In addition, the Portfolio Indicative Value will be widely disseminated at least every 15 seconds during the Core Trading Session by one or more major market data vendors. On each business day, before commencement of trading in Shares in the Core Trading Session on the Exchange, the Fund will disclose on its Web site the Disclosed Portfolio that will form the basis for the Fund's calculation of NAV at the end of the business day. On a daily basis, the Adviser will disclose for each portfolio security or other financial instrument of the Fund the following information: ticker symbol (if applicable), name of security or financial instrument, number of shares or dollar value of other securities and financial instruments held in the portfolio, and percentage weighting of the security or financial instrument in the portfolio. The Web site for the Fund will include a form of the prospectus for the Fund that may be downloaded, and additional data relating to NAV and other applicable quantitative information, updated on a daily basis. Moreover, prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin of the special characteristics and risks associated with trading the Shares. Trading in Shares of the Fund will be halted if the circuit breaker parameters in NYSE Arca Equities Rule 7.12 have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. Trading in the Shares will be subject to NYSE Arca Equities Rule 8.600(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of actively-managed exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding the Fund's holdings, the Portfolio Indicative Value, the Disclosed Portfolio, and quotation and last-sale information for the Shares.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2012–24 on the subject line.

[22] 15 U.S.C. 78f(b)(5).

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2012–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street NE., Washington, DC 20549, on official business days between 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2012–24 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8149 Filed 4–4–12; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66706; File No. SR–NASDAQ–2012–045]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Fee Pilot Program for NASDAQ Last Sale

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2012, The NASDAQ Stock Market LLC (''NASDAQ'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for three months the fee pilot pursuant to which NASDAQ distributes the NASDAQ Last Sale (''NLS'') market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the internet and television. Specifically, NASDAQ offers the ''NASDAQ Last Sale for NASDAQ'' and ''NASDAQ Last Sale for NYSE/Amex'' data feeds containing last sale activity in US equities within the NASDAQ Market Center and reported to the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). The purpose of this proposal is to extend the existing pilot program for three months, from April 1, 2012 to June 30, 2012.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, NASDAQ believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on Web sites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

7039. NASDAQ Last Sale Data Feeds

(a) For a three month pilot period commencing on [January] *April* 1, 2012, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1)–(2) No change.

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data at no cost to millions of internet users and television viewers. NASDAQ now proposes a three-month extension of that pilot program, subject to the same fee structure as is applicable today.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NASDAQ previously stated that it would file a proposed rule change to make the NLS pilot fees permanent. NASDAQ has also informed Commission staff that it is consulting with FINRA

NLS consists of two separate ''Level 1'' products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the ''NASDAQ Last Sale for NASDAQ'' data product is a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the ''NASDAQ Last Sale for NYSE/Amex'' data product provides real-time last sale information including execution price, volume, and time for NYSE- and NYSE Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. By contrast, the securities information processors (''SIPs'') that provide ''core'' data consolidate last sale information from all exchanges and trade reporting facilities (''TRFs''). Thus, NLS replicates a subset of the information provided by the SIPs.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms are eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product. Firms that are unable to maintain username/password entitlement systems and/or quote counting mechanisms also have multiple options for purchasing the NASDAQ Last Sale data. These firms choose between a ''Unique Visitor'' model for internet delivery or a ''Household'' model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at $50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products pay a single $1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The $1,500 monthly fee applies to all distributors and does not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the internet and television.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data. In adopting Regulation NMS, the Commission granted self-regulatory organizations (''SROs'') and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

NASDAQ believes that its NASDAQ Last Sale market data products are precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by lessening regulation of the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[6]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The recent decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (DC Cir. 2010), upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [7]

The Court in *NetCoalition,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSEArca's data product at issue in that case. As explained below in NASDAQ's Statement on Burden on Competition, however, NASDAQ believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition* case, and that the Commission is entitled to rely upon such evidence in concluding that the fees established in this filing are the product of competition, and therefore in accordance with the relevant statutory standards.[8] Moreover, NASDAQ further

to develop a proposed rule change by FINRA to allow inclusion of FINRA/NASDAQ TRF data in NLS on a permanent basis. Based on the progress of these discussions, NASDAQ expects that it and FINRA will both submit filings to make NLS permanent during 2012.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] *NetCoalition,* at 535.

[8] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3) to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. Although this change in the law does not alter the Commission's authority to evaluate and ultimately disapprove exchange rules if it concludes that they are not consistent with the Act, it unambiguously reflects a conclusion that market data fee changes do not require prior Commission review before taking effect, and that a proceeding with regard to a particular fee change is required only if the Commission determines that it is

Continued

notes that the product at issue in this filing—a NASDAQ last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSEArca depth-of-book data product at issue in *NetCoalition*. Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ's ability to price its Last Sale Data Products is constrained by (1) Competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[9] In NASDAQ's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are *the* source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, NASDAQ would be unable to defray its platform costs of providing the joint products.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, NASDAQ believes that products such as NLS can enhance order flow to NASDAQ by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to

necessary or appropriate to suspend the fee and institute such a proceeding.

[9] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. NASDAQ pays rebates to attract orders, charges relatively low prices for market information and charges relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower liquidity rebates to attract orders, setting relatively low prices for accessing posted liquidity, and setting relatively high prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including thirteen SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSEAmex, NYSEArca, BATS, and Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, and (ii) free SIP data products with a 15-minute time delay, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and Direct Edge. Today, BATS and Direct Edge provide data at no charge in order to attract order flow, and use market data revenue rebates from the resulting executions to maintain low execution charges for their users. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available *at no cost* with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

The competitive nature of the market for products such as NLS is borne out by the performance of the market. In May 2008, the internet portal Yahoo! began offering its Web site viewers real-time last sale data (as well as best quote data) provided by BATS Trading. In response, in June 2008, NASDAQ launched NLS, which was initially subject to an ''enterprise cap'' of $100,000 for customers receiving only one of the NLS products, and $150,000 for customers receiving both products. The majority of NASDAQ's sales were at the capped level. In early 2009, BATS expanded its offering of free data to include depth-of-book data. Also in early 2009, NYSEArca announced the launch of a competitive last sale product with an enterprise price of $30,000 per month. In response, NASDAQ combined the enterprise cap for the NLS products and reduced the cap to $50,000 (*i.e.,* a reduction of $100,000 per month). Although each of these products offers only a specific subset of data available from the SIPs, NASDAQ believes that the products are viewed as substitutes

for each other and for core last-sale data, rather than as products that must be obtained in tandem. For example, while the internet portal Yahoo! continues to disseminate only the BATS last sale product, Google disseminates only NASDAQ's product.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition* at 24. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS data revenues, the value of NLS as a tool for attracting order flow, and ultimately, the volume of orders routed to NASDAQ and the value of its other data products.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to NLS, including real-time consolidated data, free delayed consolidated data, and proprietary data from other sources ensures that NASDAQ cannot set unreasonable fees, or fees that are unreasonably discriminatory, without losing business to these alternatives. Accordingly, NASDAQ believes that the acceptance of the NLS product in the marketplace demonstrates the consistency of these fees with applicable statutory standards.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Three comment letters were filed regarding the proposed rule change as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at *http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml.* In addition, in response to prior filings to extend the NLS pilot,[10] the Securities Industry and Financial Markets Association (''SIFMA'') and NetCoalition filed comment letters contending that the SEC should suspend and institute disapproval proceedings with respect to the filing. Last year, SIFMA and NetCoalition filed a petition seeking review by the United States Court of Appeals for the District of Columbia Circuit with respect to the NLS pricing pilots in effect from July 1, 2011 through September 30, 2011 and from October 1, 2011 through December 31, 2011. These appeals have been stayed pending resolution of the consolidated case *NetCoalition* v. *SEC,* Nos. 10–1421, 10–1422, 11–1001, and 11–1065 (''*NetCoalition II*'').

The letters submitted by SIFMA and NetCoalition incorrectly assert that the original *NetCoalition* case stands for the proposition that the Commission must review cost data to substantiate a determination that competitive forces constrain the price of market data. In fact, the court held the opposite:

The petitioners believe that the SEC's market-based approach is prohibited under the Exchange Act because the Congress intended ''fair and reasonable'' to be determined using a cost-based approach. The SEC counters that, because it has statutorily-granted flexibility in evaluating market data fees, its market-based approach is fully consistent with the Exchange Act. We agree with the SEC.[11]

SIFMA and NetCoalition further contend the prior filing lacked evidence supporting a conclusion that the market for NLS is competitive, asserting that arguments about competition for order flow and substitutability were rejected in *NetCoalition.* While the court did determine that the record before it was not sufficient to allow it to endorse those theories on the facts of that case, the court did not itself make any conclusive findings about the actual presence or absence of competition or the accuracy of these theories: rather, it simply made a finding about the state of the SEC's record. Moreover, analysis about competition in the market for depth-of-book data is only tangentially relevant to the market for last sale data. As discussed above and in the prior filing, perfect and partial substitutes for NLS exist in the form of real-time core market data, free delayed core market data, and the last sale products of competing venues, additional competitive entry is possible, and evidence of competition is readily apparent in the pricing behavior of the venues offering last sale products and the consumption patterns of their customers. Thus, although NASDAQ believes that the competitive nature of the market for all market data, including depth-of-book data, will ultimately be established, SIFMA and NetCoalition's letters not only mischaracterize the *NetCoalition* decision, they also fail to address the characteristics of the product at issue and the evidence already presented.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[12] At any time within 60 days of the filing of the

[10] Securities Exchange Act Release No. 65488 (October 5, 2011), 76 FR 63334 (October 21, 2011) (SR–NASDAQ–2011–132); Securities Exchange Act Release No. 64856 (July 12, 2011), 76 FR 41845 (July 15, 2011) (SR–NASDAQ–2011–092); Securities Exchange Act Release No. 64188 (April 5, 2011), 76 FR 20054 (April 11, 2011) (SR–NASDAQ–2011–044).

[11] *NetCoalition,* 615 F3d. at 534. While the court noted that cost data could sometimes be relevant in determining the reasonableness of fees, it acknowledged that submission of cost data may be inappropriate where there are ''difficulties in calculating the direct costs * * * of market data,'' *Id.* at 539. That is the case here, due to the fact that the fixed costs of market data production are inseparable from the fixed costs of providing a trading platform, and the marginal costs of market data production are minimal or even zero. Because the costs of providing execution services and market data are not unique to either of the provided services, there is no meaningful way to allocate these costs among the two ''joint products''—and any attempt to do so would result in inherently arbitrary cost allocations.

The court explicitly acknowledged that the ''joint product'' theory set forth by NASDAQ's economic experts in *NetCoalition* (and also described in this filing) could explain the competitive dynamic of the market and explain why consideration of cost data would be unavailing. The court found, however, that the Commission could not rely on the theory because it was not in the Commission's record. *Id.* at 541 n.16. For the purpose of providing a complete explanation of the theory, NASDAQ is further submitting as Exhibit 3 to this filing a study that was submitted to the Commission in SR–NASDAQ–2011–010. *See* Statement of Janusz Ordover and Gustavo Bamberger at 2–17 (December 29, 2010).

[12] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2012–045 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2012–045. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2012–045 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8205 Filed 4–4–12; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66698; File No. SR–BX–2012–022]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Non-Display of Primary Pegged Orders With an Offset Amount

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2012, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Exchange Rule 4751(f)(4) to provide that Primary Pegged Orders with an offset amount will never be displayed. The text of the proposed rule change is available at *nasdaqomxbx.cchwallstreet.com,* at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

BX proposes to amend Rule 4751(f)(4) to provide that Primary Pegged Orders with an offset amount will be non-displayed, a change that will improve system and inter-market price stability. Pegged Orders are orders that, once entered, adjust in price automatically, in response to changes in the inside bids or offers of the BX Equities Market or the national market system, depending upon the type of pegged order. A Primary Pegged Order specifies that its price will equal the inside quote on the same side of the market; a Market Pegged Order will equal the inside quote on the opposite side of the market. A Midpoint Peg Order will equal the midpoint of the national best bid and offer (''NBBO''), excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. As the bids and offers change, so move the pegged orders. A Pegged Order may have a limit price beyond which the order shall not be executed. Primary Pegged Orders and Market Pegged Orders may establish their pricing relative to the appropriate bids or offers by selecting one or more offset amounts that will adjust the price of the order by the offset amount selected.

Under the Exchange's current rule, Midpoint Pegged Orders are not displayed, while Primary and Market Pegged Orders may be displayed or not displayed, at the option of the person placing the order. The display of Primary Pegged Orders with an offset amount can potentially result in excessive messaging when multiple venues display pegged non-marketable orders. In these scenarios, it is possible for the Primary Pegged Orders on each venue to react to and change in relation to each other, resulting in excessive messaging and ''quote flickering.'' A

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

rule change to eliminate display of Primary Pegged Orders with an offset amount will prevent this feedback loop, adding to system stability and improving market quality.

Market participants retain the ability to display orders through other order options available under the Exchange rules, including by using Primary Pegged Orders without an offset amount or Market Pegged Orders. Because Primary Pegged orders without an offset amount are priced at the inside quote, they do not present the same messaging problem. Rapid updates to displayed Primary Pegged Orders may still occur, but are more likely to be the result of rapid trading. Market Pegged Orders, in contrast to Primary Pegs with an offset amount, are typically priced to execute and rarely post, and thus also do not present the excessive messaging problem.

The Commission approved the non-display of Pegged Orders when it approved the application of BATS Exchange, Inc. (''BATS''), for registration as a national securities exchange and found BATS' proposed rules consistent with Section 6 of the Act.[4] BATS Rule 11.9(c)(8) provides that Pegged Orders ''are not displayed on the Exchange.'' [5]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Non-display of Primary Pegged Orders with an offset amount will minimize excess messaging that distracts from, rather than improves transparency and stability. Market participants can elect to display orders by using other available order types. The Exchange believes that the proposed change to Rule 4751(f)(4) meets the requirements of Section 6(b)(5) of the Act [8] in that it will improve the stability, quality and transparency of the national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that providing for non-display of Primary Pegged Orders will not burden competition since at least one other exchange currently offers the same attribute for pegged orders.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) [10] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–022 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–022. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2012–022 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8169 Filed 4–4–12; 8:45 am]

BILLING CODE 8011–01–P

[4] Securities Exchange Act Release No. 58375 (August 18, 2008) 73 FR 49498 (August 21, 2008); see also Securities Exchange Act Release No. 57322 (February 13, 2008), 73 FR 9370 (February 20, 2008).

[5] *BATS* Rule 11.9(c)(8).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66701; File No. SR–CBOE–2012–027]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend Pilot Programs Relating to FLEX Exercise Settlement Values and Minimum Value Sizes

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2012, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the operation of its pilot programs regarding permissible exercise settlement values and the elimination of minimum value sizes for Flexible Exchange Options (''FLEX Options''),[4] which pilot programs are currently set to expire on March 30, 2012, through the earlier of November 2, 2012 or the date on which the respective pilot program is approved on a permanent basis. The text of the proposed rule change is available on the Exchange's Web site (*www.cboe.org/Legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 28, 2010, the Exchange received approval of a rule change that established two pilot programs regarding permissible exercise settlement values and the elimination of minimum value sizes for FLEX Options. The pilot programs are currently set to expire on March 30, 2012, unless otherwise extended or made permanent.[5] The purpose of this rule change filing is to extend the two pilot programs through the earlier of November 2, 2012 or the date on which the respective pilot program is approved on a permanent basis. This filing does not propose any substantive changes to the pilot programs and contemplates that all other terms of FLEX Options will remain the same.

Background on the Pilots

Exercise Settlement Values Pilot for FLEX Index Options

Under Rules 24A.4, *Terms of FLEX Options,* and 24B.4, *Terms of FLEX Options,* FLEX Options may expire on any business day specified as to day, month and year, not to exceed a maximum term of fifteen years. In addition, the exercise settlement value for FLEX Index Options can be specified as the index value determined by reference to the reported level of the index as derived from the opening or closing prices of the component securities (''a.m. settlement'' or ''p.m. settlement,'' respectively) or as a specified average, provided that the average index value must conform to the averaging parameters established by the Exchange.[6] However, prior to the initiation of the exercise settlement values pilot, only a.m. settlements were permitted if a FLEX Index Option expires on, or within two business days of, a third-Friday-of-the-month expiration (''Expiration Friday'').[7]

Under the exercise settlement values pilot, this restriction on p.m. and specified average price settlements in FLEX Index Options was eliminated.[8] The exercise settlement values pilot is operating on a pilot basis, which pilot is currently set to expire on March 30, 2012.

Minimum Value Size Pilot for All FLEX Options

Prior to the initiation of the pilot eliminating the minimum value size requirements, the minimum value size requirements under Rules 24A.4(a)(4) and 24B.4(a)(5) were as follows:

- For opening transactions in any FLEX series in which there is no open interest at the time a FLEX RFQ or FLEX Order, as applicable, is submitted, the minimum value size was (i) for FLEX Equity Options, the lesser of 250 contracts or the number of contracts overlying $1 million in the underlying securities; and (ii) for FLEX Index Options, $10 million Underlying Equivalent Value. Under a prior pilot program (which was superseded by the minimum value size pilot program), the ''250 contracts'' component above had been reduced to ''150 contracts.'' [9]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform are contained in Chapter XXIVB.

[5] Securities Exchange Act Release Nos. 61439 (January 28, 2010), 75 FR 5831 (February 4, 2010) (SR–CBOE–2009–087) (Approval Order); 61676 (March 9, 2010), 75 FR 13191 (March 18, 2010) (SR–CBOE–2010–026) (technical rule change to include original pilots' conclusion date of March 28, 2011 in the rule text); and 64110 (March 24, 2011), 76 FR 17463 (March 29, 2011) (SR–CBOE–2011–024) (extending the pilots through March 30, 2012).

[6] *See* Rules 24A.4(b)(3) and 24B.4(b)(3); *see also* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17). The Exchange has determined to limit the averaging parameters to three alternatives: the average of the opening and closing index values; the average of the intra-day high and low index values; and the average of the opening, closing, and intra-day high and low index values. Any changes to the averaging parameters established by the Exchange would be announced to Trading Permit Holders via circular.

[7] For example, prior to the pilot, the exercise settlement value of a FLEX Index Option that expires on the Tuesday before Expiration Friday could have an a.m., p.m. or specified average settlement. However, the exercise settlement value of a FLEX Index Option that expires on the Wednesday before Expiration Friday could only have an a.m. settlement.

[8] No change was necessary or requested with respect to FLEX Equity Options. Regardless of the expiration date, FLEX Equity Options are settled by physical delivery of the underlying.

[9] *See* Securities Exchange Act Release No. 57429 (March 4, 2008), 73 FR 13058 (March 11, 2008) (SR–CBOE–2006–36) (approval of rule change that, among other things, established a one-and-a-half

Continued

• For a transaction in any currently-opened FLEX series resulting from an RFQ or from trading against the electronic book (other than FLEX Quotes responsive to a FLEX Request for Quotes and FLEX Orders submitted to rest in the electronic book), the minimum value size was (i) for FLEX Equity Options, the lesser of 100 contracts or the number of contracts overlying $1 million in the underlying securities in the case of opening transactions, and 25 contracts in the case of closing transactions; and (ii) for FLEX Index Options, $1 million Underlying Equivalent Value in the case of both opening and closing transactions; or (iii) in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less.

• The minimum value size for FLEX Quotes responsive to an RFQ and FLEX Orders (undecremented size) submitted to rest in the electronic book was 25 contracts in the case of FLEX Equity Options, and $1 million Underlying Equivalent Value in the case of FLEX Index Options, or in either case the remaining underlying size or Underlying Equivalent Value on a closing transaction, whichever is less. In addition, with respect to FLEX Index Appointed Market-Makers, FLEX Quotes and FLEX Orders (undecremented size) must have been for at least $10 million Underlying Equivalent Value or the dollar amount indicated in the Request for Quote (if applicable), whichever is less.

Under the minimum value size pilot, these minimum value size requirements were eliminated.[10] Like the exercise settlement values pilot mentioned above, the minimum value size pilot is operating on a pilot basis, which pilot is currently set to expire on March 30, 2012.

Proposal

CBOE is proposing to extend the two pilot programs through the earlier of November 2, 2012 or the date on which the pilot program is approved on a permanent basis. CBOE believes the pilot programs have been successful and well received by its membership and the investing public for the period that they have been in operation as pilots. CBOE intends to submit one or more separate rule changes that would seek permanent approval of each pilot. The present extension of the pilots is being submitted so that the pilots can continue without interruption while CBOE seeks permanent approval of the programs under a separate rule change filing(s).

In support of the proposed extension of the pilot programs, and as required by the pilot programs' Approval Order, the Exchange has submitted to the Commission pilot program reports regarding the two pilots, which detail the Exchange's experience with the two programs. Specifically, for the expiration settlement values pilot, the Exchange provided the Commission an annual report analyzing volume and open interest for each broad-based FLEX Index Options class overlying an Expiration Friday, p.m.-settled FLEX Index Options series.[11] The annual report also contained information and analysis of FLEX Options trading patterns. The Exchange also provided the Commission, on a periodic basis, interim reports of volume and open interest. For the minimum value size pilot, the Exchange provided the Commission an annual report containing data and analysis of underlying equivalent values, open interest and trading volume, and analysis of the types of investors that initiated opening FLEX Equity and Index Options transactions (i.e., institutional, high net worth, or retail). The reports were provided to the Commission on a confidential basis.

The Exchange believes there is sufficient investor interest and demand in the pilot programs to warrant their extensions. The Exchange believes that the programs have provided investors with additional means of managing their risk exposures and carrying out their investment objectives. Furthermore, the Exchange has not experienced any adverse market effects with respect to the pilot programs.

As noted above, CBOE intends to seek permanent approval of the two pilot programs under a separate rule change filing(s). In the event a pilot program is not approved on a permanent basis by November 2, 2012, the Exchange will submit an additional pilot program report covering the extended period of the respective pilot. Such report would include the details referenced above and be consistent with the pilot programs' Approval Order. The Exchange will also continue, on a periodic basis, to submit interim reports of volume and open interest consistent with the terms of the exercise settlement values pilot program as described in the pilot programs' Approval Order. All such pilot reports would continue to be provided on a confidential basis. The Exchange will also continue, on a periodic basis, to gather data and conduct analysis of underlying equivalent values, open interest and trading volume and to conduct analysis of the types of investors that initiated opening FLEX Equity and Index Options transactions consistent with the terms of the minimum value size pilot as described in the pilot programs' Approval Order. As noted in the pilot programs' Approval Order, any positions established under the respective pilot program would not be impacted by the expiration of the pilot program.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaging in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Specifically, the Exchange believes that the proposed extension of the pilot programs, which permit additional exercise settlement values and eliminate minimum value size requirements, would provide greater opportunities for investors to manage risk through the use

year pilot program that reduced the minimum number of contracts required for a FLEX Equity Option opening transaction in a new series).

[10] The provisions in Rules 24A.9(b) and 24B.9(c) that provide that every FLEX Quote entered by a FLEX Appointed Market-Maker or a FLEX Qualified Market-Maker shall meet or exceed the minimum value size parameters set forth in Rules 24A.4(a)(4)(iv) and 24B.4(a)(5)(iv), respectively, have not been/are not applicable during the duration of the pilot program. This is because all minimum value size requirements under Rules 24A.4(a)(4) and 24B.4(a)(5) have been eliminated under the pilot program.

[11] The annual report also contained pilot period and pre-pilot period analyses of volume and open interest for Expiration Friday, a.m.-settled FLEX Index series and Expiration Friday Non-FLEX Index series overlying the same index as an Expiration Friday, p.m.-settled FLEX Index option.

[12] For example, a position in a pm-settled FLEX Index Option series that expires on Expiration Friday in January 2015 could be established during the exercise settlement values pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist. However, the Exchange notes that any further trading in the series would be restricted to transactions where at least one side of the trade is a closing transaction. As another example, a 10-contract FLEX Equity Option opening position that overlies less than $1 million in the underlying security and expires in January 2015 could be established during the minimum value size pilot. If the pilot program were not extended (or made permanent), then the position could continue to exist and any further trading in the series would be subject to the minimum value size requirements for continued trading in that series. *See* Approval Order, *supra* note 6, footnotes 9 and 10.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

of FLEX Options. Further, the Exchange notes that it has not experienced any adverse effects from the operation of the pilot programs. The Exchange also believes that the extension of the exercise settlement values pilot and minimum value size pilot does not raise any unique regulatory concerns. In particular, although p.m. settlements may raise questions with the Commission, the Exchange believes that, based on the Exchange's experience in trading FLEX Options to date and over the pilot period, market impact and investor protection concerns will not be raised by this rule change. The Exchange also believes that the proposed rule change would continue to provide Trading Permit Holders and investors with additional opportunities to trade customized options in an exchange environment (which offers the added benefits of transparency, price discovery, liquidity, and financial stability as compared to the over-the-counter market) and subject to exchange-based rules, and investors would benefit as a result.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [17] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6) [18] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that waiving the 30-day operative delay would prevent the expiration of the pilot programs on March 30, 2012, prior to the extension of the pilot programs taking effect, and believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.[19] Therefore, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–027 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–027. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CBOE–2012–027 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Kevin M. O'Neill,

Deputy Secretary.

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[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66702; File No. SR–CBOE–2011–123]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Establish an Automated Improvement Mechanism and a Solicitation Auction Mechanism for FLEX Options

March 30, 2012.

I. Introduction

On December 20, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposed rule change to establish an Automated Improvement Mechanism (''AIM'') and Solicitation Auction Mechanism (''SAM'') for FLEX Options. The proposed rule change was published for comment in the **Federal Register** on January 4, 2012.[3] The Commission received two comment letters regarding the proposal.[4] The Exchange submitted a response on March 20, 2012.[5] This order approves the proposed rule change.

II. Description of the Proposal

The Exchange is proposing new Rules 24B.5A and 24B.5B to establish an AIM and SAM for FLEX Options. Currently, the AIM and SAM are available for non-FLEX Options under Rules 6.74A and 6.74B. The FLEX versions of the AIM and SAM mechanisms are described below.

A. Automated Improvement Mechanism

The Exchange is proposing to establish an AIM mechanism for FLEX Options. Under the AIM process, a FLEX Trader[6] (''Initiating TPH'') that represents agency orders may submit an order it represents as agent (an ''Agency Order'') along with a second order (a principal order and/or solicited order(s) for the same amount as the Agency Order)[7] into the AIM mechanism where other FLEX Trader participants could compete with the Initiating TPH's second order to execute against the Agency Order.

To be eligible, the Agency Order must be in a FLEX class designated as eligible for AIM Auctions and within the designated AIM Auction order eligibility size parameters. The Exchange will announce such classes and size parameters via circular to FLEX Traders. In addition, an Initiating TPH must stop the entire Agency Order as principal and/or with a solicited order(s) at the better of the best bid or offer (''BBO'') or the Agency Order's limit price.[8]

Only one AIM may be ongoing at any given time in a series and AIM auctions in the same series may not queue or overlap. In addition, unrelated FLEX Orders may not be submitted to the electronic book for the duration of an AIM auction.[9] To initiate an AIM auction, the Initiating TPH must mark the Agency Order for AIM processing and enter the second order in one of two formats: (i) a specified single price at which it seeks to cross the Agency Order with the second order (a ''single-priced submission''), or (ii) a non-price specific commitment for the second order to automatically match the price and size of all auction responses that are received during the auction (an ''auto-match''), in which case the Agency Order will be stopped at the better of the BBO or the Agency Order's limit price. When using the auto-match feature, the Initiating TPH would have no control over the ultimate match price. Once the Initiating TPH has submitted an Agency Order for AIM processing, such submission cannot be cancelled by the Initiating TPH.[10]

Upon receipt of an Agency Order (and second order), the Exchange will issue a request for responses (''RFR''), detailing the side and size of the Agency Order.[11] The duration of the RFR response period (*i.e.,* the auction period) would be established by the Exchange on a class-by-class basis and shall not be less than three (3) seconds. During that period, RFR responses may be submitted by FLEX Traders. These responses must specify price and size and may not cross the Exchange's BBO on the opposite side of the market. RFR responses are not visible to any other participants and shall not be disseminated to the Options Price Reporting Authority (''OPRA''). RFR responses may be modified or cancelled so long as they are modified or cancelled before the conclusion of the RFR response period. Lastly, the minimum price increment for RFR responses and for an Initiating TPH's single price submission shall be set by the Exchange at no less than one cent.[12]

Normally, an AIM Auction ends at the conclusion of the RFR response period (which will be no less than three seconds). However, the proposal provides that the AIM Auction would end prior to the conclusion of the RFR response period any time an RFR response matches the BBO on the opposite side of the market from the RFR responses.[13] At the conclusion of the AIM Auction, the Agency Order would be allocated at the best price(s) and contra-side interest will be ranked and matched based on price-time priority, subject to the following:

- Such best prices may include non-AIM Auction FLEX Orders (to the extent the Exchange has determined to make available an electronic book).
- Public customers and non-TPH broker-dealers RFR responses and FLEX Orders would have priority.
- No FLEX Appointed Market-Maker participation entitlement would apply with respect to the AIM Auction.
- If the best price equals the Initiating TPH's single-price submission, the Initiating TPH's single-price submission shall be allocated the greater of one contract or a certain percentage of the order, which percentage would be determined by the Exchange and may not be larger than 40%. However, if only one other FLEX Trader matches the Initiating TPH's single price submission, then the Initiating TPH may be allocated up to 50% of the order.
- If the Initiating TPH selected the auto-match option of the AIM Auction, the Initiating TPH shall be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating TPH shall be allocated the greater of one contract or a certain percentage of the remainder of the Agency Order, which percentage would be determined by the Exchange and may not be larger than 40%.
- Any remaining RFR responses and FLEX Orders will be allocated based on time priority. The Initiating TPH would not participate on any such balance unless the Agency Order would otherwise go unfilled.
- If the final AIM Auction price locks a public customer or non-TPH broker-dealer order in the electronic book on the same side of the market as the Agency Order, then, unless there is sufficient size in the AIM Auction responses to execute both the Agency Order and the booked public customer or non-TPH broker-dealer order (in which case they will both execute at the final AIM Auction price), the Agency Order will execute against RFR responses at one minimum RFR response increment worse than the final AIM Auction price against the AIM

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 66052 (January 4, 2012), 77 FR 306.

[4] *See* Letters to Elizabeth M. Murphy, Secretary, Commission from Todd Weingart, Spot On Brokerage Services, Division of Trading Block, William O'Keefe, Spot On Brokerage Services, Division of Trading Block, and Steve Stepanek, The SJS Group, Inc., dated January 20, 2012 (''Spot Letter'') and from Jonathan Grodnick, Chicago Trading Company, dated February 7, 2012 (''CTC Letter'').

[5] *See* Letter to Elizabeth M. Murphy, Secretary, Commission from Jennifer M. Lamie, CBOE dated March 20, 2012 (''CBOE Response'').

[6] A ''FLEX Trader'' means a FLEX-participating Trading Permit Holder (''TPH'') who has been approved by the Exchange to trade on the System. *See* Rule 24B.1(l).

[7] Any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class. *See* proposed Rule 24B.5A.04.

[8] *See* proposed Rule 24B.5A(a).

[9] *See* proposed Rule 24B.5A(b).

[10] *See* proposed Rule 24B.5A(b)(1)(i).

[11] Each RFR will be sent to those FLEX Traders electing to receive RFRs (*i.e.,* those FLEX Traders who have established the necessary systems connectivity to receive RFRs). Thus, such election to receive RFRs would not be on a case-by-case basis.

[12] *See* proposed Rule 24B.5A(b)(1)(ii)–(ix).

[13] *See* proposed Rule 24B.5A(b)(2).

Auction participants that submitted the final AIM Auction price and any balance shall trade against the public customer or non-TPH broker-dealer order in the book at such order's limit price.[14]

The Exchange proposes that the AIM may only be used where there is a genuine intention to execute a bona fide transaction.[15] In addition, it would be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 to engage in a pattern of conduct where the Initiating TPH breaks-up an Agency Order into separate orders for two (2) or few contracts for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures.

The Exchange also may determine on a class-by-class basis to make the AIM Auction available for complex orders. In such classes, complex orders may be executed through the AIM Auction at a net debit or net credit price provided the AIM Auction eligibility requirements are satisfied and the Agency Order is eligible for the AIM Auction considering its complex order type, order origin code, class, and marketability as determined by the Exchange. Complex orders will only be eligible to trade with other complex orders through the AIM Auction.[16]

Initially, and for at least a pilot period expiring on July 18, 2012, there will be no minimum size requirement for orders to be eligible for the AIM Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is a meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the AIM Auction. Any data which is submitted to the Commission will be provided on a confidential basis.[17]

Any determinations made by the Exchange pursuant to the proposed rule, such as eligible classes, order size parameters and the minimum price increment, would be communicated in a circular.[18]

B. Solicitation Auction Mechanism

The Exchange also proposes to establish a SAM mechanism for FLEX Options. The SAM permits a FLEX Trader to electronically execute larger-sized Agency Orders against solicited orders.[19] To be eligible, the Agency Order must be in a FLEX class designated as eligible for SAM Auctions and within the designated SAM Auction order eligibility size parameters determined by the Exchange (however, the eligible order size would not be less than 500 contracts). Such classes and size parameters will be determined by the Exchange and announced via circular to FLEX Traders. Each order entered into the SAM would be designated all-or-none (*i.e.,* an order will be executed in its entirety or not at all).[20]

Once the Initiating TPH has submitted an Agency Order for SAM processing, such submission cannot be cancelled by the Initiating TPH. To initiate the SAM, the Initiating TPH must mark the Agency Order for SAM processing, and specify a single price at which it seeks to cross the Agency Order with a solicited order. Upon receipt of an Agency Order (and second order), an RFR message will be sent to all FLEX Traders that have elected to receive such messages, detailing the price and size of the Agency Order. The duration of the RFR response period (*i.e.,* the auction period) would be established by the Exchange on a class-by-class basis and shall not be less than three (3) seconds. During that period, RFR responses may be submitted by FLEX Traders (specifying prices and sizes), except that responses may not be entered for the account of an options Market-Maker from another options exchange. Responses shall not be visible for other SAM participants and shall not be disseminated to OPRA. RFR responses may be modified or cancelled so long as they are modified or cancelled before the conclusion of the RFR response period.[21] Lastly, the minimum price increment for RFR responses and for an Initiating TPH's single price submission shall be set by the Exchange at no less than one cent.[22]

Normally, a SAM ends at the conclusion of the RFR response period. However, as with AIM, the proposal provides that the SAM would end prior to the conclusion of the RFR response period any time an RFR response matches the BBO on the opposite side of the market from the RFR responses.[23] At the conclusion of the SAM auction, the Agency Order would be executed against the second/solicited order unless there is sufficient size to execute the entire Agency Order at a price (or prices) that improves the proposed crossing price. In the case where there are one or more public customers or non-TPH broker-dealers at the proposed execution price on the opposite side of the Agency Order, the second/solicited order would be cancelled and the Agency Order would be executed against other bids (offers) if there is sufficient size at the bid (offer) to execute the entire size of the Agency Order (size would be measured considering RFR responses and resting FLEX Orders, to the extent the Exchange has determined to make available an electronic book). If there is not sufficient size to execute the entire Agency Order, the proposed cross would not be executed and both the Agency Order and second/solicited order would be cancelled. Additionally, the proposed cross would not be executed and both the Agency Order and second/solicited order would be cancelled if the execution price would be inferior to the BBO.[24]

In the event the Agency Order is executed at an improved price(s) or at the proposed execution price against RFR responses and FLEX Orders, the allocation priority at a given price would be as follows: (i) RFR responses and FLEX Orders for the account of public customers and non-TPH broker-dealers, based on time priority; (ii) any RFR responses and FLEX Orders that are subject to a FLEX Appointed Market-Maker participation entitlement, based on a participation entitlement formula specified in Rule 24B.5(d)(2)(ii); then (iii) all other RFR responses and FLEX Orders, based on time priority.[25]

The Exchange proposes to apply the SAM mechanism to complex orders, on a class-by-class basis. In such classes, complex orders may be executed through the SAM at a net debit or net credit price provided the SAM eligibility requirements are satisfied and the Agency Order is eligible for the SAM considering its complex order type, order origin code, class, and

[14] *See* proposed Rule 24B.5A(b)(3).

[15] *See* proposed Rule 24B.5A.01.

[16] *See* proposed Rule 24B.5A.05. To the extent the Exchange determines to make an electronic book available for resting FLEX Orders, there will be no ''legging'' of complex orders with FLEX Orders that may be represented in the individual series legs represented in the electronic book. Order allocation shall be the same as would be applicable for simple orders. In addition, the individual series legs of a complex order would not trade through equivalent bids (offers) in the individual series legs represented in the electronic book and at least one leg must better the corresponding bid (offer) of public customers and non-TPH broker-dealers in the electronic book.

[17] *See* proposed Rule 24B.5A.03.

[18] *See* proposed Rule 24B.5A.06.

[19] Any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class. *See* proposed Rule 24B.5B.03.

[20] *See* proposed Rule 24B.5B(a).

[21] *See* proposed Rule 24B.5B(b)(1).

[22] *See* proposed Rule 24B.5B(a)(3) and (b)(1)(v).

[23] *See* proposed Rule 24B.5B(b)(2).

[24] *See* proposed Rule 24B.5B(b)(3).

[25] *See* proposed Rule 24B.5B(b)(3)(i)(D).

marketability as determined by the Exchange. Complex orders will only be eligible to trade with other complex orders through the SAM.[26]

The proposed rule also requires TPHs to deliver to customers a written document, in a form approved by the Exchange, describing the terms and conditions of the SAM mechanism prior to executing Agency Orders using the SAM mechanism.[27] The proposed rule further specifies that TPHs may not use the SAM mechanism to circumvent the Exchange's rules limiting principal order transactions.[28] The Exchange also proposes that any determinations made by the Exchange pursuant to the proposed SAM Auction rule, such as eligible classes, order size parameters and the minimum price increment, would be communicated in a circular.[29]

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[30] and, in particular, the requirements of Section 6 of the Act.[31] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[32] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that approving the Exchange's proposal to establish the AIM and SAM for FLEX Options should confer benefits to the public by increasing competition between and among the options exchanges, resulting in better prices and executions for investors.[33] The Commission therefore finds that for the reasons discussed below, the Exchange's proposal is consistent with the Act.

A. Automated Improvement Mechanism

The Exchange proposes that the Initiating TPH must stop the Agency Order at the better of the BBO or the Agency Order's limit price. The Commission believes that the proposed stop price should provide customers with an opportunity for price improvement over the Exchange's BBO. The Commission believes that it is reasonable to stop the Agency Order at the better of the BBO or the Agency Order's limit price, versus the National Best Bid or Offer, because FLEX options are generally not multiply-listed and are not subject to a consolidated quotation reporting program. In addition, the FLEX AIM will only process Agency Orders with limit prices, not market orders. The Commission also believes that the proposal should provide FLEX Traders with incentives to compete in AIM auctions. The Commission notes that once an Agency Order is submitted into the AIM, the submission may not be modified or cancelled. Therefore, the Agency Order submitted to the AIM will be guaranteed an execution price of at least the BBO and, moreover, will be given an opportunity for execution at a price better than the BBO.

The Exchange also proposes to send an RFR to all FLEX Traders that have elected to receive RFRs, and RFR responses may be submitted by FLEX Traders. The Commission believes that permitting access to the AIM auction for all FLEX Traders who may wish to compete for an Agency Order should be sufficient to provide opportunities for a meaningful, competitive auction.

With respect to the RFR period, the Exchange proposes that the duration of the RFR response period will be established by the Exchange on a class-by-class basis and shall not be less than three seconds. One commenter argued that the proposed three second RFR period for a new FLEX strike and cross would present an exceptional technological challenge to market making firms attempting to provide liquidity in FLEX Options. The commenter suggested that the response time in the AIM and SAM for newly added flex strikes be increased from three seconds to one minute.[34] CBOE disagreed, stating that in today's market, a one-minute timer far exceeds the standards that have been set for any other exchange timer. CBOE notes that while the FLEX market may be thinly traded or a bit more complex given its customized nature; however, this does not mean that the AIM or SAM should be subject to unnecessarily lengthy timers. According to CBOE, FLEX AIM and SAM are intended to be automated and FLEX Traders desiring to participate in the FLEX AIM and SAM need to dedicate resources to program to the auctions. Assuming a FLEX Trader develops the technology to electronically trade, CBOE believes the three second interval is sufficient to electronically process and respond to an auction in today's markets.[35]

The Commission agrees that the three-second electronic auction proposed by the Exchange should provide sufficient time for an electronic crowd to compete for an Agency Order. The Commission notes that the RFR response period of three seconds is consistent with the existing minimum exposure period for FLEX Option crossing pursuant to the existing FLEX crossing procedures.[36]

Under the proposal, allocation will be based on price-time priority, subject to public customer and non-TPH broker-dealer priority. No FLEX Appointed Market-Maker participation entitlement shall apply. If the best price equals the Initiating TPH's single-price submission, the Initiating TPH's single-price submission shall be allocated the greater of one contract or up to 40% of the order.[37] If the Initiating TPH selected the auto-match option of the AIM Auction, the Initiating TPH shall be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating TPH shall be allocated the greater of one contract or up to 40% of

[26] *See* proposed Rule 24B.5B.01. To the extent the Exchange determines to make an electronic book available for resting FLEX Orders, there will be no ''legging'' of complex orders with FLEX Orders that may be represented in the individual series legs represented in the electronic book. Order allocation shall be the same as would be applicable for simple orders. In addition, the individual series legs of a complex order would not trade through equivalent bids (offers) in the individual series legs represented in the electronic book, and at least one leg must better the corresponding bid (offer) of public customers and non-TPH broker-dealers in the electronic book.

[27] *See* proposed Rule 24B.5B.02.

[28] *See* proposed Rule 24B.5B.03

[29] *See* proposed Rule 24B.5B.04.

[30] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[31] 15 U.S.C. 78f.

[32] 15 U.S.C. 78f(b)(5).

[33] The Commission notes, that it previously found the non-FLEX AIM and SAM mechanisms consistent with the Act. *See, e.g.,* Securities Exchange Act Release Nos. 53222 (February 3, 2006), 71 FR 7089 (February 10, 2006) (SR–CBOE–2005–60) (Order Approving AIM) and 57610 (April 3, 2008), 73 FR 19535 (April 10, 2008) (SR–CBOE–2008–14) (Order Approving SAM).

[34] *See* CTC Letter, *supra* note 4, at 1. The Commission also received another comment letter regarding the proposed rule change. *See* Spot Letter, *supra* note 4. The Spot Letter suggested that there be an additional phase, the Decision Phase, in the RFQ process. During this Decision Phase, the initiator of an RFQ would have a brief period of time, during which no changes of any type to market quotes would be permitted, in order to decide to trade or cancel their RFQ. The Commission notes that the subject of the comment letter (the RFQ process for FLEX Options) is not related to the CBOE's proposal to establish a separate AIM and SAM for FLEX Options.

[35] *See* CBOE Response, *supra* note 5, at 3.

[36] *See* Rule 24B.5(b)(3)(iii).

[37] However, if only one other FLEX Trader matches the Initiating TPH's single price submission, then the Initiating TPH may be allocated up to 50% of the order.

the remainder of the Agency Order. Any remaining RFR responses and FLEX Orders will be allocated based on time priority. In addition, it will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 4.1 to engage in a pattern of conduct where the Initiating TPH breaks-up an Agency Order into separate orders for 2 or fewer contracts for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in the AIM.

The Commission believes that the priority and allocation rules are reasonable and consistent with the Act.[38] The Commission believes that the matching algorithm set forth in the FLEX AIM rule is sufficiently clear regarding how orders are allocated in the AIM auction. The Commission notes that the proposal to provide both public customers and non-TPH broker-dealers with first priority in the FLEX AIM auction is consistent with how other FLEX allocation algorithms currently operate.[39] In addition, the Commission notes that public customer priority/non-TPH broker-dealer priority and price-time priority have previously been found consistent with the Act.[40]

Like the Exchange's AIM for non-FLEX options, the FLEX AIM auction would be available for orders of fewer than 50 contracts. Under the Exchange's proposal, there would be no minimum size requirement for orders entered into the AIM, for a pilot period expiring on July 18, 2012. The Commission believes that the Exchange's proposal should provide small customer orders with the opportunity for price improvement, and is consistent with the Act. In particular, any Agency Order for less than 50 contracts that is entered into the AIM is guaranteed an execution at the end of the auction at a price at least the BBO. The Commission will evaluate the AIM auction during the Pilot Period to determine whether it would be beneficial to customers and to the options market as a whole to approve any proposal requesting permanent approval to permit orders of fewer than 50 contracts to be submitted to the AIM auction. In addition, the Commission will examine the data submitted by the Exchange with respect to situations in which the AIM auction is terminated prematurely by an RFR response. To aid the Commission in its evaluation, the CBOE represents that it will provide the following information each month:

(1) The number of orders of fewer than 50 contracts entered into the FLEX AIM auction;

(2) The percentage of all orders of fewer than 50 contracts sent to CBOE that are entered into CBOE's FLEX AIM auction;

(3) The percentage of all CBOE FLEX trades represented by orders of fewer than 50 contracts;

(4) The percentage of all CBOE FLEX trades effected through the FLEX AIM auction represented by orders of fewer than 50 contracts;

(5) The percentage of all FLEX contracts traded on CBOE represented by orders of fewer than 50 contracts;

(6) The percentage of all FLEX contracts effected through the FLEX AIM auction represented by orders of fewer than 50 contracts;

(7) The spread in the option, at the time an order of fewer than 50 contracts is submitted to the FLEX AIM auction;

(8) The number of orders of 50 contracts or greater entered into the FLEX AIM auction;

(9) The percentage of all FLEX orders of 50 contracts or greater sent to CBOE that are entered into CBOE's FLEX AIM auction;

(10) The spread in the option, at the time an order of 50 contracts or greater is submitted to the FLEX AIM auction;

(11) Of FLEX AIM trades for orders of fewer than 50 contracts, the percentage done at the BBO, BBO plus $.01, BBO plus $.02, BBO plus $.03, etc.;

(12) Of FLEX AIM trades for orders of 50 contracts or greater, the percentage done at the BBO, BBO plus $.01, BBO plus $.02, BBO plus $.03, etc.;

(13) The number of orders submitted by FLEX Traders when the spread was $.05, $.10, $.15, etc. For each spread, specify the percentage of contracts in orders of fewer than 50 contracts submitted to CBOE's FLEX AIM that were traded by:

(a) The Initiating TPH that submitted the order to the FLEX AIM;

(b) CBOE Market Makers assigned to the class;

(c) Other FLEX Traders;

(d) Public Customer Orders;

(e) Non-TPH broker-dealers; and

(f) Other non-AIM FLEX Orders.

For each spread, also specify the percentage of contracts in orders of 50 contracts or greater submitted to CBOE's FLEX AIM that were traded by:

(a) The Initiating TPH that submitted the order to the FLEX AIM;

(b) CBOE Market Makers assigned to the class;

(c) Other FLEX Traders;

(d) Public Customer Orders;

(e) Non-Trading Permit Holder broker-dealers; and

(f) Other non-AIM FLEX Orders.

(14) The number of times that an RFR response matching the BBO on the opposite side of the market from the RFR responses prematurely ended the FLEX AIM auction, and the number of times such orders were entered by the same (or affiliated) firm that initiated the FLEX AIM auction that was terminated;

(15) The percentage of FLEX AIM early terminations due to the receipt of an RFR response matching the BBO on the opposite side of the market from the RFR responses that occurred within a ½ second of the start of the AIM auction; the percentage that occurred within one second of the start of the AIM auction; the percentage that occurred within one and ½ second of the start of the AIM auction; the percentage that occurred within 2 seconds of the start of the AIM auction; the percentage that occurred within 2 and ½ seconds of the AIM auction; and the average amount of price improvement provided to the Agency Order where the AIM auction is terminated early at each of these time periods;

(16) The average amount of price improvement provided to the Agency Order when the FLEX AIM auction is not terminated early (*i.e.,* runs the full three seconds);

(17) The percentage of all CBOE FLEX trades effected through the FLEX AIM auction in which the Initiating TPH has chosen the Auto-Match feature, and the average amount of price improvement provided to the Agency Order when the Initiating TPH has chosen the Auto-Match feature vs. the average amount of price improvement provided to the Agency Order when the Initiating TPH has chosen a single-price submission;

(18) For the first Wednesday of each month:

(a) The total number of FLEX AIM auctions on that date;

(b) The number of FLEX AIM auctions where the order submitted to the AIM was fewer than 50 contracts;

(c) The number of FLEX AIM auctions where the order submitted to the AIM was 50 contracts or greater;

(d) The number of FLEX AIM auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and

(e) The number of FLEX AIM auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants

[38] The Commission also believes that the proposed priority and allocation rules for electronic FLEX trading in the AIM are consistent with Section 11(a) of the Act. 15 U.S.C. 78k(a) Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies. FLEX Market-Makers qualify for the market-maker exception. With respect to non-market-maker members, the auction appears reasonably designed to cause RFR Quotes constituting the RFR Market and the RFR Order that trades against the RFR Market to yield to non-member interest, consistent with the ''G'' exception. *See* 15 U.S.C. 78k(a)(1)(G) (setting forth all requirements for the ''G'' exception).

[39] *See, e.g.,* Rule 24B.5(a)(1)(iii)(C) and (D).

[40] *See, e.g.,* Securities Exchange Act Release Nos. 51822 (June 10, 2005), 70 FR 35321 (June 17, 2005) (SR–CBOE–2004–87) (Adopting rules pertaining to priority and allocation of trades for index options) and 56792 (November 15, 2007), 72 FR 65776 (November 23, 2007) (SR–CBOE–2006–99) (Adopting rules providing for the trading of FLEX Options on an electronic platform).

(excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.; and

(19) For the third Wednesday of each month:

(a) The total number of FLEX AIM auctions on that date;

(b) The number of FLEX AIM auctions where the order submitted to the AIM was fewer than 50 contracts;

(c) The number of FLEX AIM auctions where the order submitted to the AIM was 50 contracts or greater;

(d) The number of FLEX AIM auctions (for orders of fewer than 50 contracts) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc., and

(e) The number of FLEX AIM auctions (for orders of 50 contracts or greater) with 0 participants (excluding the initiating participant), 1 participant (excluding the initiating participant), 2 participants (excluding the initiating participant), 3 participants (excluding the initiating participant), 4 participants (excluding the initiating participant), etc.

B. Solicitation Auction Mechanism

The Exchange is also proposing a SAM Auction for FLEX Options. The Commission believes that the proposal should allow for greater flexibility in pricing large-sized orders. The Commission further believes that the proposal includes appropriate terms and conditions to assure that the Agency Order is first exposed to FLEX Traders by RFR for the possibility of price improvement and that public customer orders on the Exchange are protected. The Commission also notes that the proposal is similar to requirements set forth in the CBOE SAM for non-FLEX Options.[41]

The Exchange proposes that the duration of the RFR response period would be established by the Exchange on a class-by-class basis and shall not be less than three seconds. As with the AIM, one commenter suggested that the response time in the SAM for newly added flex strikes be increased from three seconds to one minute.[42] The Commission believes that the three-second electronic auction proposed by the Exchange should provide sufficient time for an electronic crowd to compete for an Agency Order. The Commission notes that the RFR response period of three seconds is consistent with the existing minimum exposure period for FLEX Option crossing pursuant to the existing FLEX crossing procedures.[43] The Commission believes that using the same period of time to respond to RFRs in SAM auctions should be appropriate for FLEX Traders.

Under the proposal, at the conclusion of the SAM, the Agency Order would be executed against the second/solicited order unless there is sufficient size to execute the entire Agency Order at a price(s) that improves the proposed crossing price. In the case where there are one or more public customers or non-TPH broker-dealers at the proposed execution price on the opposite side of the Agency Order, the second/solicited order would be cancelled and the Agency Order would be executed against other bids (offers) if there is sufficient size at the bid (offer) to execute the Agency Order entirely. If there is not sufficient size to execute the entire Agency Order, or if the execution price would be inferior to the BBO, then the proposed cross would not be executed, and both the Agency Order and second/solicited order would be cancelled. In the event the Agency Order is executed at an improved price(s) or at the proposed execution price against RFR responses and FLEX Orders, priority would first go to RFR responses and FLEX Orders for the account of public customers and non-TPH broker-dealers based on time priority, then any RFR responses and FLEX Orders that are subject to a FLEX Appointed Market-Maker participation entitlement, and finally all other RFR responses and FLEX Orders. The Commission believes that the priority and allocation rules are reasonable and consistent with the Act.[44]

The Commission also notes that the Exchange has included a provision stating that FLEX Traders may not use the SAM auction to circumvent Rule 24B.5 limiting principal transactions. The Exchange will also require written notification to customers prior to entering Agency Orders into the SAM on behalf of the customer and will require that determinations made by the Exchange regarding eligible classes, order size parameters, and the minimum price increment shall be communicated in a Regulatory Circular. The Exchange also proposes to permit the processing of complex orders. The Commission believes that the provisions help to clarify application of the SAM rule and may encourage further use of FLEX Options.

One commenter asserted that the current FLEX auction mechanism should not be allowed to migrate to the CBOE Hybrid platform, arguing that participants that submit RFQs can receive quote responses that lock and/or cross markets.[45] In response, CBOE stated that the comments have no relevance to the instant proposed rule change, which simply seeks to implement the two new FLEX AIM and SAM auctions and which does not propose any changes to the existing electronic RFQ auction mechanism.[46]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[47] that the proposed rule change (File No. SR–CBOE–2011–123), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[48]

Kevin M. O'Neill,

Deputy Secretary.

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[41] *See* Rule 6.74B.

[42] *See* CTC Letter, *supra* note 4, at 1. *See also* discussion at Section III.A regarding the three-second RFR period for the AIM.

[43] *See* Rule 24B.5(b)(3)(iii).

[44] The Commission also believes, for the same reasons described above for the AIM, that the proposed priority and allocation rules for electronic FLEX trading in the SAM are consistent with Section 11(a) of the Act. *See supra* note 38.

[45] *See* CTC Letter, *supra* note 4, at 2.

[46] *See* CBOE Response, *supra* note 5, at 4. CBOE, however, notes that with respect to the FLEX SAM auction, the mechanism uses an all-or-none type allocation methodology and, by design it is possible for an agency order to receive an execution at a price that is through a response price. This is consistent with how the existing SAM auction for non-FLEX Options currently operates. *Id.*

[47] 15 U.S.C. 78s(b)(2).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66704; File No. SR–CBOE–2012–030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to FLEX Transaction Fees

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 29, 2012, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule as it relates to Flexible Exchange Options (''FLEX Options''). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has submitted a separate proposed rule change to establish two new automated auctions for FLEX Options trading: the FLEX Automated Improvement Mechanism (the ''AIM'' auction) under proposed Rule 24B.5A and the FLEX Solicitation Auction Mechanism (the ''SAM'' auction) under proposed Rule 24B.5B (the two auctions are collectively referred to herein as the ''CFLEX AIM'' auctions).[3] The primary purpose of this proposed rule change is to amend the CBOE Fees Schedule to adopt a ''CFLEX AIM Response Fee'' for broker-dealer responses to the CFLEX AIM auctions. Currently, under the existing Fees Schedule, the transaction fee for broker-dealer responses would be $0.40 per contract for OEX, XEO, SPX and volatility index options and $0.45 per contract for all other products (as such responses would be entered electronically).[4] As proposed, the transaction fee for broker-dealer responses executed in the CFLEX AIM auctions will remain $0.40 per contract for OEX, XEO and SPX and volatility index options and will be reduced to $0.25 per contract for all other products.

As structured, the transaction fees for the CFLEX AIM auctions will be as follows:

- For executions of orders that are initially entered as Agency/Primary Orders, the transaction fee will be the per contract rate(s) already specified in the Fees Schedule.[5] (No changes to the Fees Schedule are necessary to reflect these fee rates, except that footnote 19 of the Fees Schedule is being amended to provide that the Broker-Dealer AIM Agency/Primary fee applies to FLEX AIM and FLEX SAM auctions. Footnote 19 is also being amended to provide that, because there is no FLEX trading in Credit Default Options and Credit Default Basket Options, the Broker-Dealer AIM Agency/Primary fee is not applicable to those options.)
- For executions of orders that are initially entered as the contra party to an Agency/Primary Order, the transaction fee will be the AIM Contra Execution Fee already specified in the Fees Schedule.[6] (Footnote 18 of the Fees Schedule is being amended to provide that the AIM Contra Execution Fee applies to FLEX AIM and FLEX SAM auctions. Footnote 18 is also being amended to provide that, because there is no FLEX trading in Credit Default Options and Credit Default Basket Options, the AIM Agency/Primary fee is not applicable to those options.)
- For responses, as noted above, the fees schedule will be amended to provide for a ''CFLEX AIM Response Fee'' for broker-dealer responses. Again, the applicable standard transaction fee of $0.40 per contract will continue to apply for FLEX AIM and FLEX SAM auction response executions in OEX, XEO, SPX and volatility index options and $0.25 per contract will apply in all other products. For all other types of response (*i.e.,* customer, voluntary professional, professional, CBOE Market-Maker/DPM, and Clearing Trading Permit Holder Proprietary) the applicable standard transaction fee will apply.[7] (No changes to the Fees Schedule are necessary to reflect these non-broker-dealer fee rates.)[8]

The CFLEX AIM Response Fee and other changes noted above will be

[3] *See* Securities Exchange Act Release No. 66052 (December 23, 2011), 77 FR 306 (January 4, 2012) (SR–CBOE–2011–123) (the ''CFLEX AIM Filing''). The FLEX AIM or FLEX SAM auctions would be used to cross FLEX Option orders through an exposed auction process. These FLEX auctions are modeled after the AIM and SAM auctions available for trading in non-FLEX Options under Rules 6.74A and 6.74B, respectively.

[4] *See* Section 1 of the Fees Schedule.

[5] For equity options, the transaction fees are as follows: $0.00 per contract for the account of public customers, $0.25 per contract for the account of Professionals and Voluntary Professionals, and $0.20 per contract for all others. For index, ETF, ETN and HOLDRS options, the transaction fees are as follows: For the account of public customers: $0.44 per contract in SPX if the premium is greater than or equal to $1; $0.35 per contract in SPX if the premium is less than $1; $0.40 per contract in OEX, XEO and volatility index options; and $0.18 per contract in other index, ETF, ETN and HOLDRS options. For the account of Professionals and Voluntary Professionals: $0.40 per contract in OEX, XEO, and volatility index options; and $0.25 per contract in other index, ETF, ETN and HOLDRS options. For the account of CBOE Market-Makers/DPMs: $0.20 per contract. For Clearing Trading Permit Holder (''TPH'') proprietary trading: $0.25 per contract in OEX, XEO, SPX and volatility index options; and $0.20 per contract in other index, ETF, ETN and HOLDRS options. For the account of broker-dealers $0.20 per contract in all products, except volatility index options; and $0.40 per contract in volatility index options. The Exchange notes that CBOE Market-Maker/DPM/e-DPM transactions fees are subject to a Liquidity Provider Sliding Scale and Clearing TPH transaction fees are subject to a Fee Cap. *See* Section 1 and footnotes 10, 11, 12 and 19 of the Fees Schedule. The Exchange also notes that the $0.25 per contract transaction rates for Professionals and Voluntary Professionals identified above for equity options and index, ETF, ETN and HOLDRS options (other than OEX, XEO and volatility index options) will be effective April 1, 2012. *See* SR–CBOE–2012–032.

[6] The AIM Contra Execution Fee is generally $0.05 per contract and applies to all orders (excluding facilitation orders, per footnote 11 of the Fees Schedule) in all products except OEX, XEO, SPX and volatility indexes executed in AIM that were initially entered into AIM as the contra party to an AIM Agency/Primary Order. The fee applies to such executions instead of the applicable standard transaction fee except if the applicable standard transaction fee is lower than $0.05 per contract, in which case the applicable standard fee applies. Applicable standard transaction fees apply to AIM executions in OEX, XEO, SPX and volatility index options. *See* footnote 18 of the Fees Schedule (for a description of the AIM Contra Execution Fee). *See* note 8, *supra,* for a description of the applicable standard transaction fees, including the standard transaction fees for OEX, XEO, SPX and volatility index options except for transactions for the account of broker-dealers (per Section 1 of the Fees Schedule, the applicable standard transaction fee for broker-dealers is $0.40 per contract in OEX, XEO, SPX and volatility index options).

[7] *See* note 8, *supra,* for a description of the applicable standard transaction fees.

[8] The Exchange notes that the existing CFLEX Surcharge Fee will also apply to CFLEX AIM auction executions, whether executed as a Primary/Agency Order, a contra order, or a response. The CFLEX Surcharge Fee applies to all orders (all origin codes) executed electronically on the FLEX Hybrid Trading System. The CFLEX Surcharge Fee is $0.10 per contract, up to the first 2,500 contracts per trade. *See* Section 1 and footnote 17 of the Fees Schedule. In addition, the existing index license surcharge fees and product research and development surcharge fees will apply to CFLEX AIM auction executions, whether executed as a Primary/Agency Order, a contra order, or a response. The index license surcharge fees and product research and development surcharge fees apply to all non-public customer transactions (*i.e.,* the surcharge fees apply to CBOE and non-TPH market-makers, Clearing TPHs and broker-dealers, voluntary professionals and professionals) and are as follows: index license surcharge fees of $0.10 per contract for OEX, XEO, SPX, DJX, and volatility index options (except GVZ, VXEEM, VXEWZ, and OVX) and $0.15 per contract for MDX, NDX, and RUT; and product research and development surcharge fees of $0.10 per contract for GVZ, VXEEM, VXEWZ, and OVX. *See* Section 1 and footnote 14 of the Fees Schedule.

effective immediately and applied once the CFLEX AIM Filing is approved and the auctions are activated on the Exchange.

The Exchange is also taking this opportunity to make other miscellaneous changes to the Fees Schedule. In particular, the Exchange is proposing to delete outdated references to the ''S&P 500 Dividend Index'' (which no longer trades on the Exchange). The Exchange is also proposing to make various non-substantive technical changes (moving, adding, removing semicolons in Section 1 of the Fees Schedule for consistency in formatting; and in footnote 19, changing the phrase ''Primary/Agency'' to ''Agency/Primary'' for consistency). Finally, the Exchange is proposing to amend Footnotes 18 and 19 of the Fees Schedule to make clear that the AIM Contra Execution Fee and Broker-Dealer AIM Agency/Primary Fee, respectively, also apply to SAM auctions in non-FLEX Options. This is how the Exchange has intended and historically applied the fee (the Exchange commonly refers to both auctions as AIM auctions, *e.g.,* the SAM auction is also commonly referred to as the ''AIM AON'' auction) and the changes to the Fees Schedule are intended to be more descriptive in that regard. These changes will be effective immediately.

The Exchange believes it is reasonable and equitable to charge TPHs for responses to CFLEX AIM auctions in the manner proposed. With the proposed rule change to include a CFLEX AIM Response Fee for broker-dealer responses, TPHs submitting responses participating in CFLEX AIM auctions will be assessed similar fees, minimizing any gap that would exist between different order origin code types should the applicable standard transaction fees be applied and at the same time equitably distributing the costs of attracting orders for execution in the CFLEX AIM auctions. In that regard, at the proposed levels, TPHs submitting responses on behalf of broker-dealers will in fact see their fees lowered for the CFLEX AIM auctions (except for OEX, XEO, SPX and volatility index options) compared to the applicable standard transaction fee that would otherwise apply. These levels are equivalent to the levels that would be assessed for responses on behalf of Professionals and Voluntary Professionals. The Exchange notes that it has historically maintained differentials in the fees it charges TPHs for transactions of public customers, Professionals, Voluntary Professionals, CBOE Market-Makers/DPMs/e-DPMs, Clearing TPHs and broker-dealers. The Exchange believes it is reasonable and equitable to treat these groups of market participants differently. For example, the Exchange believes that offering a slightly lower fee for responses of CBOE Market-Makers than those of other market participants is equitable and not unfairly discriminatory because CBOE Market-Makers take on certain obligations to the Exchange (such as providing two-sided markets) that other market participants to [sic] not undertake. The Exchange also believes that offering a lower fee for responses of public customers than those originating from other market participants is equitable and not unfairly discriminatory because the Exchange believes this will attract public customer order flow to the Exchange and incentivize firms to execute public customer orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity and the greater number of public customer orders with which to trade. The Exchange also believes that the [sic] offering a lower fee for responses of Clearing TPHs is equitable and not unfairly discriminatory because it provides an incentive for Clearing TPHs to contribute capital to facilitate the execution of customer orders, which in turn provides a deeper pool of liquidity on CBOE, which ultimately benefits all market participants who trade FLEX products on CBOE.

Along the same lines, the Exchange believes it is reasonable and equitable to charge the existing AIM Agency/Primary fee for broker-dealer orders (which is $0.20 per contract in all products except for volatility indexes, which are subject to the applicable standard transaction fees) because the Exchange believes that charging a lower fee for broker-dealer Agency/Primary orders, consistent with the existing fee for Agency/Primary orders traded in Non-FLEX AIM and SAM auctions, would attract additional broker-dealer order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for broker-dealer Agency/Primary orders in Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions.

The Exchange further believes it is reasonable and equitable to charge the existing AIM Contra Execution fee (which is $0.05 per contract except for (i) executions for the account of public customers, which are not subject to any transaction fee; and (ii) executions in OEX, XEO, SPX and volatility index options, which are subject to the applicable standard transaction fees) because the Exchange believes charging a lower fee to the contra-party in CFLEX AIM auctions, consistent with the existing fee for contra-party executions in Non-FLEX AIM and SAM auctions, would attract additional order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for contra-parties to Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions.

The Exchange further believes the proposed fee structure is not unfairly discriminatory because the fee structure is consistent with the fee structure that exists today, but simply minimizes any gap that would exist between different order origin code types should the applicable standard transaction fees be applied to broker-dealer responders to CFLEX AIM auctions. Additionally, the Exchange believes that the fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other option exchanges. The Exchange believes it remains an attractive venue for market participants to trade FLEX Options as its fees remain competitive with those charged by other exchanges for FLEX Options and for similar electronic auctions (although we note that CBOE is the only options exchange to offer an electronic mechanism for trading FLEX Options). The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange or the over-the-counter market if they deem fee levels at a particular exchange to be excessive. With this proposed rule change, the Exchange believes it remains an attractive venue for market participants to trade FLEX Options.

Finally, in amending the Fees Schedule to delete outdated references to the S&P 500 Dividend Index, make non-substantive technical changes, and make clear the applicability of the AIM Contra Execution Fee and Broker-Dealer AIM Agency/Primary Fee to SAM auctions in non-FLEX Options, the proposed rule change is more descriptive for users and should help to avoid any potential confusion about the

applicability of the fees. The Exchange believes these changes, which are designed to make the Fees Schedule more descriptive and avoid confusion, further the objectives of Section 6(b)(5) [9] of the Act in particular, in that they remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among TPHs.

The Exchange believes it is reasonable and equitable to charge TPHs for responses to CFLEX AIM auctions in the manner proposed. With the proposed rule change to include a CFLEX AIM Response Fee for broker-dealer responses, TPHs submitting responses participating in CFLEX AIM auctions will be assessed similar fees, minimizing any gap that would exist between different order origin code types should the applicable standard transaction fees be applied and at the same time equitably distributing the costs of attracting orders for execution in the CFLEX AIM auctions. In that regard, at the proposed levels, TPHs submitting responses on behalf of broker-dealers will in fact see their fees lowered for the CFLEX AIM auctions (except for OEX, XEO, SPX and volatility index options) compared to the applicable standard transaction fee that would otherwise apply. These levels are equivalent to the levels that would be assessed for responses on behalf of Professionals and Voluntary Professionals. The Exchange notes that it has historically maintained differentials in the fees it charges TPHs for transactions of public customers, Professionals, Voluntary Professionals, CBOE Market-Makers/DPMs/e-DPMs, Clearing TPHs and broker-dealers. The Exchange believes it is reasonable and equitable to treat these groups of market participants differently. For example, the Exchange believes that offering a slightly lower fee for responses of CBOE Market-Makers than those of other market participants is equitable and not unfairly discriminatory because CBOE Market-Makers take on certain obligations to the Exchange (such as providing two-sided markets) that other market participants to not undertake. The Exchange also believes that offering a lower fee for responses of public customers than those originating from other market participants is equitable and not unfairly discriminatory because the Exchange believes this will attract public customer order flow to the Exchange and incentivize firms to execute public customer orders on the Exchange. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity and the greater number of public customer orders with which to trade. The Exchange also believes that the offering a lower fee for responses of Clearing TPHs is equitable and not unfairly discriminatory because it provides an incentive for Clearing TPHs to contribute capital to facilitate the execution of customer orders, which in turn provides a deeper pool of liquidity on CBOE, which ultimately benefits all market participants who trade FLEX products on CBOE.

Along the same lines, the Exchange believes it is reasonable and equitable to charge the existing AIM Agency/Primary fee for broker-dealer orders (which is $0.20 per contract in all products except for volatility indexes, which are subject to the applicable standard transaction fees) because the Exchange believes that charging a lower fee for broker-dealer Agency/Primary orders, consistent with the existing fee for Agency/Primary orders traded in Non-FLEX AIM and SAM auctions, would attract additional broker-dealer order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for broker-dealer Agency/Primary orders in Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions.

The Exchange further believes it is reasonable and equitable to charge the existing AIM Contra Execution fee (which is $0.05 per contract except for (i) executions for the account of public customers, which are not subject to any transaction fee; and (ii) executions in OEX, XEO, SPX and volatility index options, which are subject to the applicable standard transaction fees) because the Exchange believes charging a lower fee to the contra-party in CFLEX AIM auctions, consistent with the existing fee for contra-party executions in Non-FLEX AIM and SAM auctions, would attract additional order flow to the Exchange and create liquidity in those FLEX products that are subject to CFLEX AIM auctions, which the Exchange believes ultimately will benefit all market participants who trade FLEX products on CBOE. The Exchange already provides this lower execution fee for contra-parties to Non-FLEX AIM and SAM auctions and is not proposing any changes to the fee with the proposed introduction of the CFLEX AIM auctions. The Exchange further believes the proposed fee structure is not unfairly discriminatory because the fee structure is consistent with the fee structure that exists today, but simply minimizes any gap that would exist between different order origin code types should the applicable standard transaction fees be applied to responders to CFLEX AIM auctions. Additionally, the Exchange believes that the fees are fair, equitable and not unfairly discriminatory because they are consistent with price differentiation that exists today at other option exchanges. The Exchange believes it remains an attractive venue for market participants to trade FLEX Options as its fees remain competitive with those charged by other exchanges for FLEX Options and for similar electronic auctions (although we note that CBOE is the only options exchange to offer an electronic mechanism for trading FLEX Options). The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange or the over-the-counter market if they deem fee levels at a particular exchange to be excessive. With this proposed rule change, the Exchange believes it remains an attractive venue for market participants to trade FLEX Options.

Finally, in amending the Fees Schedule to delete outdated references to the S&P 500 Dividend Index, make non-substantive technical changes, and make clear the applicability of the AIM Contra Execution Fee and Broker-Dealer AIM Agency/Primary Fee to SAM auctions in non-FLEX Options, the proposed rule change is more descriptive for users and should help to avoid any potential confusion about the applicability of the fees. The Exchange believes these changes, which are designed to make the Fees Schedule more descriptive and avoid confusion, further the objectives of Section 6(b)(5) [12] of the Act in particular, in that they remove impediments to and perfect the mechanism of a free and open market and a national market system,

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78f(b)(5).

and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is designated by the Exchange as establishing or changing a due, fee, or other charge, thereby qualifying for effectiveness on filing pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(2) of Rule 19b–4 [14] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2012–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2012–030. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2012–030 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8172 Filed 4–4–12; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66705; File No. SR–BX–2012–024]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the BOX Trading Rules Regarding the Short Term Option Series Program

March 30, 2012.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 29, 2012, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Trading Rules of the Boston Options Exchange Group, LLC (''BOX'') regarding the Short Term Option Series Program. The text of the proposed rule change is available from the principal office of the Exchange, on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Supplementary Material .07 to Chapter IV, Section 6 (Series of Options Open for Trading) and Supplementary Material .02 to Chapter XIV, Section 10 (Terms of Index Options Contracts) to expand the Short Term Option Series Program (''Weeklys Program'').[3] Specifically, the Exchange proposes to amend the BOX Rules to allow BOX to open short term option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules.

Currently, BOX may select up to 30 currently listed option classes on which short term option series may be opened

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange adopted the Weeklys Program on July 15, 2010. *See* Securities Exchange Act Release No. 62505 (July 15, 2010), 75 FR 42792 (July 22, 2010) (SR–BX–2010–047).

in the Weeklys Program. BOX may also match any option classes that are selected by other securities exchanges that employ a similar program under their respective rules. For each option class eligible for participation in the Weeklys Program, BOX may open up to 30 short term option series for each expiration date in that class.

This proposal seeks to allow BOX to open short term option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules. This change is being proposed notwithstanding the current cap of 30 series per class under the Weeklys Program. This is a competitive filing and is based on approved filings and existing rules of The NASDAQ Stock Market LLC for the NASDAQ Options Market (''NOM'') and NASDAQ OMX PHLX, Inc. (''PHLX'').[4]

BOX is competitively disadvantaged since it operates a substantially similar Weeklys Program as NOM and PHLX but is limited to listing a maximum of 30 series per options class that participates in its Weeklys Program (whereas PHLX and NOM are not similarly restricted).

The Exchange is not proposing any changes to the Weeklys Program other than the ability to open short term option series that are opened by other securities exchanges in option classes selected by other exchanges under their respective short term option rules.

BOX notes that the Weeklys Program has been well-received by market participants, in particular by retail investors. BOX believes that the current proposed revision to the Weeklys Program will permit BOX to meet increased customer demand and provide market participants with the ability to hedge in a greater number of option classes and series.

With regard to the impact of this proposal on system capacity, BOX has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of series for the classes that participate in the Weeklys Program.

The proposed increase to the number of series per classes eligible to participate in the Weeklys Program is required for competitive purposes as well as to ensure consistency and uniformity among the competing options exchanges that have adopted similar Weeklys Programs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934[5] (the ''Act'') in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that expanding the current short term options program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions and hedging decisions in greater number of securities. The Exchange believes that expanding the current program would provide the investing public and other market participants increased opportunities because an expanded program would provide market participants additional opportunities to hedge their investment thus allowing these investors to better manage their risk exposure. While the expansion of the Weeklys Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal remains limited to a fixed number of classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In this regard and as indicated above, the Exchange notes that the rule change is being proposed as a competitive response to existing NOM and PHLX rules. The Exchange believes this proposed rule change is necessary to permit fair competition among the options exchanges with respect to their short term options programs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to those of other exchanges that have been approved by the Commission that permit an exchange to open short term option series that are opened by other securities exchanges to participate in such exchange's respective short term option series program.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[4] *See* Securities Exchange Act Release Nos. 65775 (November 17, 2011), 76 FR 72473 (November 23, 2011) (SR–NASDAQ–2011–138) and 65776 (November 17, 2011), 76 FR 72482 (November 23, 2011) (SR–PHLX–2011–131).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] *See supra* note 4.

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2012–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2012–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2012–024 and should be submitted on or before April 26, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2012–8173 Filed 4–4–12; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7841]

60-Day Notice of Proposed Information Collections: Two DDTC Brokering Collections

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collections described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

These collections were published for public comment on December 19, 2011 (see 76 FR 78578). On that occasion, public comment was sought in the context of the proposed rule regarding the revision of part 129 of the International Traffic in Arms Regulations, which covers brokering of defense articles and services, and is the regulatory basis for these collections. The Department of State is now seeking OMB approval of the current collections, without reference to the changes in the proposed rule. The revised collections will be submitted for OMB review and approval in conjunction with the brokering final rule.

- *Title of Information Collection:* Brokering Prior Approval (License).
- *OMB Control Number:* 1405–0142.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 1,515.
- *Estimated Number of Responses:* 150.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 300 hours.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Required to Obtain Benefits.
- *Title of Information Collection:* Annual Brokering Report.
- *OMB Control Number:* 1405–0141.
- *Type of Request:* Extension of Currently Approved Collection.
- *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls, PM/DDTC.
- *Form Number:* None.
- *Respondents:* Business and Nonprofit Organizations.
- *Estimated Number of Respondents:* 1,515.
- *Estimated Number of Responses:* 1,515.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 3,030 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

DATES: The Department will accept comments from the public up to 60 days from April 5, 2012.

ADDRESSES: Comments and questions should be directed to Nicholas Memos, Office of Defense Trade Controls Policy, Department of State, who may be reached via the following methods:

- *Web:* Persons with access to the Internet may view and comment on this notice by going to the Federal regulations Web site at *www.regulations.gov.* You can search for the document by: selecting ''Notice'' under Document Type, entering the Public Notice number as the ''Keyword or ID'', checking the ''Open for Comment'' box, and then click ''Search.'' If necessary, use the ''Narrow by Agency'' option on the Results page.
- *Email: memosni@state.gov.*
- *Mail:* Nicholas Memos, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112.

You must include the information collection title in the subject lines of your message/letter.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice to Nicholas Memos, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112, who may be reached via phone at (202) 663–2829, or via email at *memosni@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the

use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The export, temporary import, temporary export and brokering of defense articles, defense services and related technical data are licensed by the Directorate of Defense Trade Controls in accordance with the International Traffic in Arms Regulations (22 CFR parts 120–130) and Section 38 of the Arms Export Control Act. Those of the public who manufacture or export defense articles, defense services, and related technical data, or the brokering thereof, must register with the Department of State. Persons desiring to engage in brokering activities must submit an application or written request to conduct the transaction to the Department to obtain a decision whether it is in the interests of U.S. foreign policy and national security to approve the transaction. Also, registered brokers must submit annual reports regarding all brokering activity that was transacted, and registered manufacturers and exporter must maintain records of defense trade activities for five years.

Methodology: These forms/information collections may be sent to the Directorate of Defense Trade Controls via the following methods: mail or personal delivery.

Dated: March 25, 2012.

Robert S. Kovac,

Managing Director of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State.

[FR Doc. 2012–8234 Filed 4–4–12; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 7840]

30-Day Notice of Proposed Information Collection: Form DS–3097, Exchange Visitor Program Annual Report, OMB Control Number 1405–0151

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Exchange Visitor Program Annual Report.
- *OMB Control Number:* 1405–0151.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Educational and Cultural Affairs, Office of Designation, ECA/EC/D/PS.
- *Form Number:* Form DS–3097.
- *Respondents:* designated J–1 program sponsors.
- *Estimated Number of Respondents:* 1435.
- *Estimated Number of Responses:* 1435 annually.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 2870 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Mandatory.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from April 5, 2012.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Robin J. Lerner, Deputy Assistant Secretary for Private Sector Exchange, Department of State, SA–5, Floor 5, 2200 C Street NW., Washington, DC 20522–0505, who may be reached on (202) 632–2805, fax at 202–632–2701 or email at *JExchanges@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of Proposed Collection

Annual reports from designated program sponsors assist the Department in oversight and administration of the J–1 visa program. The reports provide statistical data on the number of exchange participants an organization sponsored per category of exchange. The reports also provide a summary of the activities in which exchange visitors were engaged and an evaluation of program effectiveness. Program sponsors include government agencies, academic institutions, and private sector not-for-profit and for-profit entities.

Methodology

Annual reports are completed through the Student and Exchange Visitor Information System (SEVIS) and then printed and signed by a sponsor official, and sent to the Department by mail or fax. The Department is currently working with the Department of Homeland Security to expand SEVIS functions and enable the collection of electronic signatures. Annual reports will be submitted to the Department electronically as soon as the mechanism for doing so is approved and in place during the implementation of SEVIS II.

Dated: March 26, 2012.

Robin J. Lerner,

Deputy Assistant Secretary for Private Sector Exchange, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2012–8238 Filed 4–4–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7839]

Secretary of State's Determination Under the International Religious Freedom Act of 1998

SUMMARY: The Secretary of State designation of ''countries of particular concern'' for religious freedom violations.

Pursuant to Section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), as amended (the Act), notice is hereby given that, on August 18, 2011, the Secretary of State, under authority delegated by the President, has designated each of the following as a ''country of particular concern'' (CPC) under section 402(b) of the Act, for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Eritrea, Iran, North Korea, Saudi Arabia, Sudan, and Uzbekistan.

The Secretary simultaneously designated the following Presidential actions for these CPCs:

For Burma, the existing ongoing arms embargo referenced in 22 CFR 126.1(a), pursuant to section 402(c)(5) of the Act;

For China, the existing ongoing restrictions on exports to China of crime control and detection instruments and equipment, under Public Law 101–246 and the Foreign Relations Authorization Act of 1990 and 1991, pursuant to section 402(c)(5) of the Act;

For Eritrea, the existing ongoing arms embargo referenced in 22 CFR 126.1(a), pursuant to section 402(c)(5) of the Act;

For Iran, the existing ongoing restrictions on certain imports from and exports to Iran, in accordance with section 103(b) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195), pursuant to section 402(c)(5) of the Act;

For North Korea, the existing ongoing restrictions to which North Korea is subject, pursuant to sections 402 and 409 of the Trade Act of 1974 (the Jackson-Vanik Amendment), pursuant to section 402(c)(5) of the Act;

For Saudi Arabia, a waiver to ''further the purposes of the Act,'' pursuant to section 407 of the Act;

For Sudan, the restriction on making certain appropriated funds available for assistance to the Government of Sudan in the annual Department of State, Foreign Operations, and Related Programs Appropriations Act, currently set forth in section 7070(f) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Div. F, Pub. L. 111–117), as carried forward by the Full-Year Continuing Appropriations Act, 2011 (Div. B, Pub. L. 112–10) and any provision of law that is the same or substantially the same as this provision, pursuant to section 402(c)(5) of the Act; and

For Uzbekistan, a waiver to ''further the purposes of the Act,'' pursuant to section 407 of the Act.

Dated: March 30, 2012.

Victoria Alvarado,

Office Director, Office of International Religious Freedom, Department of State.

[FR Doc. 2012–8240 Filed 4–4–12; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

29th Meeting: RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of meeting RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

SUMMARY: The FAA is issuing this notice to advise the public of the twenty-ninth meeting of RTCA Special Committee 206, Aeronautical Information and Meteorological Data Link Services.

DATES: The meeting will be held April 23–27, 2012, from 9 a.m.—5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 206. The agenda will include the following:

April 23, 2012—Opening Plenary

- Chairmen's remarks and host's comments.
- Introductions.
- Approval of previous meeting minutes.
- Review and approve meeting agenda.
- SAA-to-SWIM-to-Flightdeck Connectivity Presentation.
- Notional MET Downlink to State Data Sources Presentation.
- SC–206 Related Work in SESAR—Progress Status.
- Discuss previously proposed TOR changes and DO–252 Revision.
  - Discuss TOR changes for the June PMC meeting.
- PMC decision on OSED document.
- ConUse FRAC resolution.

April 24, 2012

- ConUse FRAC resolution.

April 25, 2012

- ConUse FRAC resolution.
- ConUse FRAC resolution or SG1, SG2, and SG3 meetings.

April 26, 2012

- SG1, SG2, and SG3 meetings.
- Note: If needed, ConUse FRAC resolution could roll over into Thursday, which will delay the start of SG meetings.

April 27, 2012—Closing Plenary

- Sub-Group 1 report.
- Sub-Group 2 report.
- Sub-Group 3 report.
- Discussion on setting up the MASPS Sub-Group (#4) and a preliminary roadmap.
- Action item review.
- Future meeting plans and dates.
- Decision to approve the ConUse document for release to the PMC.
- Agree upon TOR changes for June PMC meeting.
- Other business.
- Adjourn—1 p.m.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 29, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–8189 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting: RTCA Special Committee 225, Rechargeable Lithium Batteries and Battery Systems, Small and Medium Size

AGENCY: Federal Aviation Administration (FAA), U.S. Department of Transportation (DOT).

ACTION: Notice of RTCA Special Committee 225, Rechargeable Lithium Batteries and Battery Systems, Small and Medium Size.

SUMMARY: The FAA is issuing this notice to advise the public of the seventh meeting of RTCA Special Committee 225, Rechargeable Lithium Batteries and Battery Systems, Small and Medium Size.

DATES: The meeting will be held May 1–3, 2012, from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1150 18th Street, NW., Suite 910, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: The RTCA Secretariat, 1150 18th Street NW., Suite 910, Washington, DC 20036, or by telephone at (202) 833–9339, fax at (202) 833–9434, or Web site at *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App.), notice is hereby given for a meeting of Special Committee 225. The agenda will include the following:

May 1, 2012

- Introductions and administrative items.

- Review agenda.
- Review and approval of summary from last plenary meeting.
- Review SC–225 schedule for Plenaries, working group meetings, and document preparation.
- Review action items.
- Working Group Meeting—Review draft document.
- Review new action items.
- Review agenda for tomorrow

May 2, 2012

- Review Agenda, other actions
- Review agenda for tomorrow.
- Working Group Meeting—Review draft document

May 3, 2012

- Review agenda, other actions.
- Verify dates of next plenary and upcoming working group meetings.
- Establish Agenda for next plenary meeting.
- Working Group Meeting—Review draft document.
- Working Group report, review progress and actions.
- Review all action items.
- Adjourn

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 29, 2012.

John Raper,

Manager, Business Operations Branch, Federal Aviation Administration.

[FR Doc. 2012–8190 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2012–0032]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by June 4, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID 2012–0032 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Ferroni, 202–366–9237, Office of Natural Environment, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: *Title:* FHWA Traffic Noise Model Version 3.0 Beta-Tester Information.

Background: Prior to the release of the Federal Highway Administration Traffic Noise Model (FHWA TNM), the FHWA Highway Traffic Noise Prediction Model (FHWA–RD–77–108), or ''108 model,'' was in use for over 20 years. Although an effective model for its time, the ''108 model'' was comprised of acoustic algorithms, computer architecture, and source code that dated to the 1970s. Since that time, significant advancements have been made in the methodology and technology for noise prediction, barrier analysis and design, and computer software design and coding. Given the fact that over $500 million were spent on barrier design and construction between 1970 and 1990, the FHWA identified the need to design, develop, test, and document a state-of-the-art highway traffic noise prediction model that utilized these advancements. This need for a new traffic noise prediction model resulted in the FHWA TNM.

In March 1998, the Federal Highway Administration (FHWA) released the Traffic Noise Model, Version 1.0 (FHWA TNM®). It was developed as a means for aiding compliance with policies and procedures under FHWA regulations. Since its release in March 1998, Version 1.0a was released in March 1999, Version 1.0b in August 1999, Version 1.1 in September 2000, Version 2.0 in June 2002, Version 2.1 in March 2003 and the current version, Version 2.5 in April 2004.

The FHWA is currently developing the TNM version 3.0, with an anticipated beta-testing of this version towards the end of 2012. Version 3.0 is an entirely new, state-of-the-art computer program used for predicting noise impacts in the vicinity of highways. It uses advances in personal computer hardware and software to improve upon the accuracy and ease of modeling highway noise, including the design of effective, cost-efficient highway noise barriers. This information request is to gather information from the beta-testers on their computer configurations, their experience using the FWHA TNM and availability of TNM files.

Respondents: Approximately 25 entities.

Frequency: Once.

Estimated Average Burden per Response: Approximately 15 minutes.

Estimated Total Annual Burden Hours: Approximately 6.25 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued On: March 30, 2012.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2012–8136 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Albuquerque, New Mexico

AGENCY: Federal Highway Administration (FHWA), USDOT.

ACTION: Rescind Notice of Intent.

SUMMARY: The FHWA is rescinding the notice of intent to prepare an environmental impact statement for the proposed improvements to the Interstate 25 and Paseo del Norte Interchange in Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Greg Heitmann, Environmental Specialist, Federal Highway Administration, New Mexico Division, 4001 Office Court Drive, Suite 801, Santa Fe, New Mexico 87507, Telephone (505) 820–2027.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico Department of Transportation (NMDOT), is rescinding the Notice of Intent to prepare an Environmental Impact Statement (EIS) for the proposed improvements to the Interstate 25 (I–25) and Paseo del Norte (PDN) Interchange in Albuquerque, New Mexico. The original project proposal resulted in a Draft Environmental Impact Statement (DEIS) with estimated construction costs in excess of $350 million. Given the circumstances of economic conditions nationally and within the state of New Mexico it became highly evident that the proposed alternatives would not be feasible.

Based on the comments received at the public hearing, results of the continuing study, as well as alternative concept work performed by the City of Albuquerque with input from the NMDOT, a new alternative resulted. The new alternative with a conceptual cost of $93 million is contained in a much smaller footprint and addresses the level of service on I–25; this solution is a workable incremental approach that can be integrated into the region's long range plan for this sector of the Albuquerque Metropolitan Area.

Project Funding is being gathered through Federal, state, and local sources. The New Mexico State Legislature and Governor passed and signed a funding bill that pursues a design-build method for the project. Other sources of funding include: Congestion Mitigation Air Quality (CMAQ) funds as well as Transportation Improvement Program funds from FHWA, City of Albuquerque funds, and Bernalillo County funds. TIGER IV grant funds from the USDOT are also being sought to fund the project.

The project will proceed under a design and build procurement process. A consultant has been awarded the contract under the direction of the NMDOT. The preferred alternative and the focus of the project are the northbound I–25 to westbound PDN movement and the eastbound PDN to southbound I–25 movement as identified by the previous DEIS. These improvements are at the center of the proposed work and project development will proceed under the direction of the NMDOT. The preliminary engineering associated with the preferred alternative will be completed by the NMDOT's consultant. The following elements must be completed prior to procuring a Design and Build contractor: (a) Identify and develop the right of way needs and mapping in order for the NMDOT to acquire the necessary rights of way. (b) Develop and obtain the necessary environmental documentation; it is currently anticipated that a Categorical Exclusion will be completed for the proposed improvements. Extensive public involvement will be part of the National Environmental Policy Act (NEPA). If necessary, an Environmental Assessment (EA) may be considered to complete the NEPA decision-making components. (c) Complete the required Interchange Access Change Request (IACR) to support the new interchange alternative.

The new interchange improvements will have to take into account the following: (a) There are improvements that will be required on both PDN and I–25. These improvements are not independent of each other. There are also improvements along the northbound and/or southbound I–25 and at the PDN/Jefferson intersection that will need to be in place before any of the interchange flyovers are constructed. (b) The alternative must demonstrate that it minimizes the features that do not fit into the project design (reduce sacrificial construction or roadway features that would be torn down during future phases). (c) The alternative must demonstrate that it improves the operation of I–25 as well as PDN and improves traffic flow in the roadway network surrounding the project area.

Finally, the project timelines indicate a preliminary engineering effort, including NEPA documentation, of 6–12 months. It is anticipated that construction would commence in June of 2013.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Issued on March 26, 2012.

J. Don Martinez.

Division Administrator, Federal Highway Administration, Santa Fe, New Mexico.

[FR Doc. 2012–8216 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2011–0027; Notice No. 4]

Northeast Corridor Safety Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Announcement of the Northeast Corridor Safety Committee (NECSC) Meeting.

SUMMARY: FRA announces the second meeting of the NECSC, a Federal Advisory Committee mandated by Section 212 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). The NECSC is made up of stakeholders operating on the Northeast Corridor (NEC), and the purpose of the Committee is to provide annual recommendations to the DOT Secretary. NECSC's meeting topics will include: Positive Train Control update presentations from NEC railroads, Transportation Security Administration NEC security initiatives, aging electric traction infrastructure, the Americans with Disabilities Act requirements, and a general discussion of safety issues.

DATES: The NECSC meeting is scheduled to commence on Thursday, May 24, 2012, at 9 a.m., and will adjourn by 4:30 p.m.

ADDRESSES: The NECSC meeting will be held at the Crowne Plaza Hotel Philadelphia Downtown, located at 1800 Market Street, Philadelphia, PA. The meeting is open to the public on a first-come, first-served basis, and is accessible to individuals with disabilities. Sign and oral interpretation can be made available if requested 10 calendar days before the meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Woolverton, NECSC Administrative Officer/Coordinator, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Mr. Robert Lauby, Acting Associate Administrator for Railroad Safety/Chief Safety Officer, FRA, 1200 New Jersey Avenue SE., Mailstop 25, Washington, DC 20590, (202) 493–6300.

SUPPLEMENTARY INFORMATION: The NECSC is mandated by a statutory provision in Section 212 of the PRIIA (codified at 49 U.S.C. 24905(f)). This Committee is chartered by the DOT Secretary and is an official Federal Advisory Committee established in accordance with the provisions of the Federal Advisory Committee Act, as amended, Title 5 U.S.C.—Appendix.

Issued in Washington, DC, on March 30, 2012.

Robert C. Lauby,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2012–8134 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0078]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 26, 2011, Iowa Interstate Railroad, Ltd. (IAIS) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 230. FRA assigned the petition Docket Number FRA–2011–0078.

IAIS seeks relief from performing the fifth annual inspection as it pertains to the inspection of flexible staybolt caps every 5 years as required by 49 CFR 230.41(a), and requests to extend the inspection interval to the tenth annual inspection. IAIS will perform all other inspections as required by 49 CFR 230.16, Annual Inspection. IAIS's justification for requesting this relief is that the current level of safety would be maintained due to the low number of service days accrued in this engine since the last flexible staybolt cap inspection. There will be a significant cost savings as the IAIS shop forces would not be required to remove the cab, piping, jacketing, and insulation to gain access to the caps to perform the staybolt cap inspection. IAIS estimates that it would take 3 months and five full-time employees to perform this inspection at a significant cost.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 7, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on March 30, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–8177 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0050]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief. FRA has assigned the petition Docket Number FRA–2011–0050.

The Alaska Railroad Corporation (ARRC) has applied for extension of the clean, repair, and test intervals for air brake valves and related components, as required by the Railroad Locomotive Safety Standards found at Title 49 Code of Federal Regulations (CFR) Section 229.27, *Annual tests,* and Section 229.29, *Biennial tests.* This relief has been requested for Locomotives ARRC 4001–4016, which are equipped with New York Air Brake (NYAB) CCB–I brake systems; Locomotives ARRC 4317–4328, which are equipped with NYAB CCB–II brake systems; and Diesel Multiple Unit ARRC 751, which is equipped with a NYAB CCB–II brake system. These units are also equipped with air dryers. Applications were originally submitted by ARRC for inclusion under the relief granted to the Association of American Railroads (AAR) by Waiver Docket Number FRA–2005–21613. However, the decision letter for that waiver specifically limits the relief to AAR member railroads. ARRC is not an AAR member; therefore, separate processing of these requests is necessary.

In support of this petition, ARRC submitted letters from NYAB attesting to the essential similarity of the air brake systems on these units to air brake systems on locomotives tested and inspected at extended intervals and granted relief under FRA–2005–21613 on CSX Transportation and the Canadian Pacific Railway. In addition, ARRC reported that they have experienced very few failures on units equipped with CCB brake systems, and that inspection of air brake components removed from Locomotives 4001–4016, at 5 years of age, ''revealed exceptional cleanliness and no issues were noted which would prevent the continued serviceability of the parts or materials * * *.''

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2011–0050) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 21, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC, on March 30, 2012.

Ron Hynes,

Acting Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2012–8175 Filed 4–4–12; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Proposed Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''Recordkeeping Requirements for Securities Transactions—12 CFR parts 12 and 151.''

DATES: You should submit comments by May 7, 2012.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0142, 250 E Street SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0142, by mail to U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–4824, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Recordkeeping Requirements for Securities Transactions—12 CFR parts 12 and 151.

OMB Number: 1557–0142.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The only revisions to the submission are the revised estimates, which have been updated.

The information collection requirements in 12 CFR parts 12 and 151 are required to ensure national bank compliance with securities laws and to improve the protection afforded persons who purchase and sell securities through banks. The transaction confirmation information provides customers with a record regarding the transaction and provides banks and the OCC with records to ensure compliance with banking and securities laws and regulations. The OCC uses the required information in its examinations to, among other things, evaluate a bank's compliance with the antifraud provisions of the Federal securities laws.

The information collection requirements contained in 12 CFR part 12 are as follows:

- Section 12.3 requires a national bank effecting securities transactions for customers to maintain records for at least three years. The records required by this section must clearly and accurately reflect the information required and provide an adequate basis for the audit of the information.
- 151.50 (a), (b), (c), and (d) requires savings associations to maintain an itemized daily records of each purchase and sale of securities in chronological order; they must maintain the account record of each customer; They must make and keep current a memorandum (order ticket) of each order or any other instructions given or received for the purchase or sale of securities; they must maintain a record of all registered broker-dealers that are selected to effect securities transactions and the amount of commissions that are made or allocated to each registered broker-dealer during each calendar year; and they must maintain a copy of the written notice required under subpart B of this part.
- Section 12.4 requires a national bank to give or send to the customer a written notification of the transaction or a copy of the registered broker/dealer confirmation relating to the transaction.
- Section 151.70 describes the type of notice a savings association must provide when they effect a securities transaction for a customer.
- Sections 12.5(a), (b), (c), and (e) describe procedures a national bank may use as an alternative to complying with § 12.4, to notify customers of transactions in which the bank does not

exercise investment discretion, trust transactions, agency transactions and certain periodic plan transactions.

• Section 151.90 requires savings associations to provide the customer a written notice, which must give or send the written notice at or before the completion of the securities transactions.

• Sections 12.7(a)(1) through (a)(3) and 151.140 require a national bank/savings association to maintain and adhere to policies and procedures that assign responsibility for supervision of employees who perform securities trading functions; provide for the fair and equitable allocation of securities and prices to accounts; and provide for crossing of buy and sell orders on a fair and equitable basis.

• Section 12.7(a)(4) requires certain bank officers and employees involved in the securities trading process to report to the bank all personal transactions in securities made by them or on their behalf in which they have a beneficial interest.

• 15.150 this section describes how an officer or employee of a savings association should report all personal transactions in securities made by or on behalf of the officer or employee if they have a beneficial interest in the security.

• Section 12.8 requires a national bank seeking a waiver of one or more of the requirements of §§ 12.2 through 12.7 to file a written request for waiver with the OCC.

Type of Review: Regular.

Affected Public: Individuals; Businesses or other for-profit.

Estimated Number of Respondents: 1,326.

Estimated Total Annual Responses: 2,833.

Estimated Frequency of Response: On occasion.

Estimated Total Annual Burden: 6,944 hours.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 28, 2012.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 2012–8139 Filed 4–4–12; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three Individuals Pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 3 individuals whose property and interests in property are blocked pursuant to Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria.''

DATES: The designation by the Director of OFAC of the 3 individuals identified in this notice, pursuant to Executive Order 13573, is effective on March 30, 2012.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, 1500 Pennsylvania Avenue NW (Treasury Annex), Washington, DC 20220, Tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202–622–0077.

Background

On May 18, 2011, the President issued Executive Order 13573, ''Blocking Property of Senior Officials of the Government of Syria,'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 13338 of May 11, 2004, which was expanded in scope in Executive Order 13572 of April 29, 2011.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be a senior official of the Government of Syria; (2) to be an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property an interests in property are blocked pursuant to this order; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of directly or indirectly, any person whose property and interest are blocked pursuant to this order.

On March 30, 2012, the Director of OFAC, in consultation with the Department of State, designated, pursuant to one or more of the criteria set forth in subsection 1(b) of the Order, 3 individuals whose property and interests in property are blocked pursuant to Executive Order 13573.

The listings for those individuals on OFAC's list of Specially Designated Nationals and Blocked Persons appear as follows:

Individuals

1. ADANOV, Munir (a.k.a. ADANOF, Munir; a.k.a. ADNUF, Munir); DOB 1951; Deputy Chief of General Staff of the Syrian Army; Lieutenant General (individual) [SYRIA].
2. RAJIHA, Dawood (a.k.a. RAJHA, Daood; a.k.a. RAJHA, Davoud; a.k.a. RAJHA, Dawood; a.k.a. RAJHA, Dawoud; a.k.a. RAJIHA, Dawood Abdukllah; a.k.a. RAJIHAH, Dawud); DOB 1947; POB Damascus, Syria; Minister of Defense; General (individual) [SYRIA].
3. SHALISH, Zuhayr (a.k.a. AL-HEMMEH, Thu; a.k.a. AL-SHALISH, Dhu Al-Himma; a.k.a. SHALEESH, Dhu Himma; a.k.a. SHALEESH, Thu Al Hima; a.k.a. SHALISH, Zuhilma; a.k.a. SHALISH, Dhu Al Himma; a.k.a. SHALISH, Dhuil Himma), Damascus, Syria; DOB circa 1956;

POB Al-Ladhiqiyah, Syria; nationality Syria; Brigadier General; Major General (individual) [IRAQ2] [SYRIA].

Dated: March 30, 2012.

Adam Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2012–8231 Filed 4–4–12; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Community Volunteer Income Tax Assistance (VITA) Matching Grant Program—Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the application package for the 2013 Community Volunteer Income Tax Assistance (VITA) Matching Grant Program.

DATES: Application packages are available electronically from the IRS on May 1, 2012 by visiting: IRS.gov (key word search— ''VITA Grant'') or through Grants.gov. The deadline for submitting an application to the IRS for the Community VITA Matching Grant Program is May 31, 2012. All applications must be submitted through Grants.gov.

ADDRESSES: Internal Revenue Service, Grant Program Office, 401 West Peachtree St. NW., Suite 1645, Stop 420–D, Atlanta, GA 30308.

FOR FURTHER INFORMATION CONTACT: Grant Program Office via their email address at *Grant.Program.Office@irs.gov.*

SUPPLEMENTARY INFORMATION: Authority for the Community Volunteer Income Tax Assistance (VITA) Matching Grant Program is contained in the Department of Defense and Full-Year Continuing Appropriations Act, 2011, Public Law 112–10, signed April 15, 2011.

Dated: March 28, 2012.

Robin Taylor,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2012–8146 Filed 4–4–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection; Comment Request

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before June 4, 2012 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number (if any) in your comment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, or copies of the information collection and instructions, or copies of any comments received, contact Elaine Christophe, at (202) 622–3179, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and the Internal Revenue Service, as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to take this opportunity to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*).

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments will become a matter of public record. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, the IRS is seeking comments concerning the following forms, and reporting and record-keeping requirements:

Title: Clear Reflection of Income in the Case of Hedging Transactions.

OMB Number: 1545–1412.

Regulation Project Number: FI–54–93 (TD 8554).

Abstract: This regulation provides guidance to taxpayers regarding when gain or loss from common business hedging transactions is recognized for tax purposes and requires that the books and records maintained by a taxpayer disclose the method or methods used to account for different types of hedging transactions.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 110,000.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 22,000.

Title: Allocations of Income and Deductions Among Taxpayers.

OMB Number: 1545–1503.

Revenue Procedure Number: Revenue Procedures 2006–09, and 2008–31.

Abstract: The information requested in these revenue procedures is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications to process such applications and negotiate agreements, and to verify compliance with the agreements and whether the agreements require modification.

Current Actions: There are no changes being made to the revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 160.

Estimated Time per Respondent: 32 hours., 49 minutes.

Estimated Total Annual Burden Hours: 5,250.

Title: Tip Rate Determination Agreement (Gaming Industry).

OMB Number: 1545–1530.

Abstract: Information is required by the Internal Revenue Service in its compliance efforts to assist employers and their employees in understanding and complying with Internal Revenue Code Section 6053(a), which requires employees to report all their tips monthly to their employers.

Current Actions: There is no change to this existing information collection.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 5,000.

Title: Reporting Requirements for Widely Held Fixed Investment Trusts.

OMB Number: 1545–1540.

Regulation Project Number: REG–125071–06 (TD 9308)

Abstract: Under regulation section 1.671–5, the trustee or the middleman who holds an interest in a widely held fixed investment trust for an investor will be required to provide a Form 1099 to the IRS and a tax information statement to the investor. The trust is also required to provide more detailed tax information to middlemen and certain other persons, upon request.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 2,400.

Title: Qualified Transportation Fringe Benefits.

OMB Number: 1545–1676.

Regulation Project Number: REG–113572–99.

Abstract: These regulations provide guidance to employers that provide qualified transportation fringe benefits under section 132(f), including guidance to employers that provide cash reimbursement for qualified transportation fringes and employers that offer qualified transportation fringes in lieu of compensation. Employers that provide cash reimbursement are required to keep records of documentation received from employees who receive reimbursement. Employers that offer qualified transportation fringes in lieu of compensation are required to keep records of employee compensation reduction elections.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individual or households, and not-for-profit institutions.

Estimated Total Annual Responses: 48,589,824.

Estimated Total Annual Burden: 12,968,728 hours.

Title: Asset Allocation Statement Under Section 338.

OMB Number: 1545–1806.

Form Number: 8883.

Abstract: Form 8883 is used to report information regarding transactions involving the deemed sale of corporate assets under section 338.

Current Actions: There is no change to this existing form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 201.

Estimated Time per Respondent: 24 hours, 17 minutes.

Estimated Total Annual Burden Hours: 4,881.

Title: Section 9100 Relief for 338 Elections.

OMB Number: 1545–1820.

Revenue Procedure Number: Revenue Procedure 2003–33.

Abstract: Revenue Procedure 2003–33 provides qualifying taxpayers with an extension of time pursuant to § 301.9100–3 of the Procedure and Administration Regulations to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 60.

Estimated Average Time per Respondent: 5 hours.

Estimated Total Annual Reporting Burden: 300.

Title: Information Returns by Donees Relating to Qualified Intellectual Property Contributions.

OMB Number: 1545–1932.

Regulation Project Number: REG–158138–04 (TD 9392).

Abstract: These final regulations provide guidance for filing information returns by donees relating to qualified intellectual property contributions. The regulations affect donees receiving qualified intellectual property contributions after June 3, 2004.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 10.

Estimated Time per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 2.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless the collection of information displays a valid OMB control number.

Approved: March 27, 2012.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2012–8145 Filed 4–4–12; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of Application Packages for the 2013 Tax Counseling for the Elderly (TCE) Program.

DATES: Application Packages are available electronically from the IRS on May 1, 2012 by visiting: IRS.gov (key

word search—''TCE'') or through Grants.gov. The deadline for submitting an application package to the IRS for the Tax Counseling for the Elderly (TCE) Program is May 31, 2012. All applications must be submitted through *Grants.gov.*

ADDRESSES: Internal Revenue Service, Grant Program Office, 5000 Ellin Road, NCFB C4–110, SE:W:CAR:SPEC:FO:GPO, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Grant Program Office via their email address at *tce.grant.office@irs.gov.*

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat. 12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals age 60 and over at the close of their taxable year. Because applications are being solicited before the FY 2013 budget has been approved, cooperative agreements will be entered into subject to the appropriation of funds.

Dated: March 28, 2012.

Robin Taylor,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2012–8144 Filed 4–4–12; 8:45 am]

BILLING CODE 4830–01–P

Reader Aids

Federal Register

Vol. 77, No. 66

Thursday, April 5, 2012

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CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

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At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

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Help to Access Land for the Education of Scouts (Apr. 2, 2012; 126 Stat. 284)

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